

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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74-2282

United States Court of Appeals

FOR THE SECOND CIRCUIT

THOMAS A. VINCEL, GRACE VINCEL, NUNO TARDO, IRENE
TARDO, WILLIAM BREEN, VIRGINIA BREEN, JOSEPH
RUMMO, ROLF HOEGER, M. D. AIELLO, P. AIELLO, &
LIRCO CREDIT CORPORATION,

Plaintiffs-Appellants,

—against—

WHITE MOTOR CORPORATION & GLENN F. KOMMER,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

(Volume II—pages 251A to 514A)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS A. VINCEL, GRACE VINCEL, NUNO
TARDO, IRENE TARDO, WILLIAM BREEN,
VIRGINIA BREEN, JOSEPH RUOMO, ROY
BOEGER, M.D. AIELLO, P. AIELLO, and
LIRCO CREDIT CORP.,

69 Civil 753

: NOTICE OF MOTION AND
: MOTION FOR SUMMARY
: JUDGMENT

Plaintiffs,

-against-

WHITE MOTOR CORPORATION AND
GLENN F. KOMMER,

Defendants.

-----x

S I R S:

PLEASE TAKE NOTICE that upon the affidavit of Stephen R. Steinberg, sworn to the 26th day of February, 1973, and exhibits annexed thereto, the summons and complaint and proposed amended complaint, the answer and counterclaim; reply to counterclaims, depositions, documentary evidence produced by the parties, all interrogatories and answers to such interrogatories; and upon all prior proceedings had herein, defendants White Motor Corporation and Glenn F. Kommer will move at the Motion Term of this Court to be held before the Hon. John F. Dooling, U.S.D.J., at the United States Courthouse, Room 225 Cadman Plaza East, Brooklyn, New York, on March 21, 1973 at 10:00 A.M. or as soon thereafter as counsel can be heard for an order pursuant to F.R.C.P. 56 for summary judgment in defendants' favor, dismissing the action on the grounds that defendants are entitled to judgment as a matter of law and that there are no genuine issues as to any material facts

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or, in the alternative, if summary judgment is not rendered in defendants' favor upon the whole case and a trial is necessary, then the Court by examining the pleadings and the evidence before it and by interrogating counsel, ascertain what material facts are actually and in good faith controverted, and thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

Dated: New York, New York
February 26, 1973

Yours, etc.,

REAVIS & McGRATH
Attorneys for Defendants

By *James W. Reavis*
1 Chase Manhattan Plaza
New York, New York 10005
Tel. No. (212) 269-7600

TO: HELLERSTEIN, ROSIER & REMBAR
Attorneys for Plaintiffs
19 West 44th Street
New York, New York 10036
Tel. No.

- 253A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
:
THOMAS A. VINCEL, GRACE VINCEL, :
NINO TARDO, IRENE TARDO, WILLIAM :
BREEN, VIRGINIA BREEN, JOSEPH :
RUMMO, ROLF HOEGER, M. D. AIELLO, :
P. AIELLO, and LIRCO CREDIT :
CORP., :

Plaintiffs, :

69 Civil 753

-against- :

MOTION

WHITE MOTOR CORPORATION and :
GLENN F. KOMMER, :

Defendants. :
:
----- X

1. Defendant, White Motor Corporation, moves the Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment in the defendants' favor dismissing the action on the ground that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law; or

2. In the alternative, if summary judgment is not rendered in defendants' favor upon the whole case and a trial is necessary, that the Court, by examining the pleadings and the evidence before it and by interrogating counsel, ascertain what material facts are actually in good faith controverted, and thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

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This Motion is based upon:

- (a) The Affidavit of Stephen R. Steinberg sworn to the 26th day of February, 1973;
- (b) summons;
- (c) complaint and proposed amended complaint;
- (d) answer and counterclaims;
- (e) reply to counterclaim;
- (f) depositions;
- (g) documentary evidence produced by the parties;
- (h) interrogatories and answers to interrogatories;
and
- (i) all prior proceedings had herein.

Dated: February 26, 1973
New York, N.Y.

REAVIS & McGRATH
Attorneys for Defendants

By James W. Reavis
A Member

1 Chase Manhattan Plaza
New York, New York 10005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

THOMAS A. VINCEL, GRACE VINCEL,	:	
NUNO TARDO, IRENE TARDO, WILLIAM	:	
BREEN, VIRGINIA BREEN, JOSEPH	:	
RUMMO, ROLF HOEGER, M. D. AIELLO,	:	
P. AIELLO, and LIRCO CREDIT CORP.,	:	69 Civil 753
Plaintiffs,	:	Affidavit in Support
-against-	:	of Defendants' Motion
	:	for Summary Judgment
WHITE MOTOR CORPORATION and	:	
GLENN F. KOMMER,	:	
Defendants.	:	

----- X

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Stephen R. Steinberg, being duly sworn, deposes and says:

1. I am Stephen R. Steinberg, a member of the firm of Reavis & McGrath, attorneys for defendants, White Motor Corporation and Glenn F. Kommer (hereinafter "White" and "Kommer" or "defendants"). I have personal knowledge of certain facts set forth herein and am fully acquainted with all prior proceedings in this action and with the undisputed and documentary evidence recited herein.

2. This affidavit is offered in support of defendants' motion for summary judgment in their favor on the grounds that (a) judgment must be granted to them based on uncontested facts as a matter of law; and (b) there are no material triable issues

of fact that preclude the granting of summary judgment. As United States District Judge Dooling said in his opinion of August 2, 1972 in this case dismissing the fourth cause of action:

"In the fourth cause of action no less than in any of the others the charge is of damage inflicted on L.I. Reo, its business, its affairs, its prospects, and its properties.....all of the acts complained of directly affect the interests of L.I. Reo primarily and damage plaintiff[s] only to the extent of and by reason of their interest in L.I. Reo. While there are repeated references to the contract relation and the trust relation, examination of the contract and trust agreement reveals nothing which changes the situation significantly."

In their proposed amended complaint, plaintiffs add allegations that some of their number were officers and employees of L.I. Reo as well as its shareholders. As is shown by defendants' accompanying memorandum of law, these belated additional facts do not change the nature of the acts alleged nor in any way modify Judge Dooling's prior conclusions.

*but were
also parties
to a contract
+ partnership
of L.I. Reo*

THIS ACTION

3. This action was originally brought by plaintiffs in their capacity as shareholders of Long Island Diamond Reo Truck Co., Inc. (hereinafter "L. I. Reo") to recover injuries allegedly suffered by L. I. Reo as a result of actions taken by defendants White and Kommer as a creditor and as an executive employee of a creditor of L. I. Reo. By their proposed amended complaint plaintiffs add to their inadequate standing as shareholders the fact that some of them were also officers and employees of L. I. Reo. It is defendants' contention that the

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uncontested material facts in this case establish that plaintiffs lack standing as either shareholders or employees of L.I. Reo to recover directly for the alleged wrongful injury to L.I. Reo, and, as more fully set-out in the accompanying Memorandum of Law that defendants are therefore entitled to summary judgment as a matter of law.

*see also
prior to
to be a
to be a
to be a*

4. The summons and complaint in this action were served on defendant White on or about July 1, 1969. Defendants' answer generally denied the allegations of the complaint and set forth several affirmative defenses and counterclaims. Depositions of the parties have been taken. Both parties have served various sets of interrogatories most of which have been answered. Defendants have also fully complied and answered the interrogatories propounded by plaintiffs. Plaintiffs, in disregard of Judge Dooling's order of August 2, 1972, still have yet to fully answer defendants' interrogatories. On August 2, 1972, upon defendants motion, Hon. John F. Dooling, U.S.D.S., reviewing the complaint and the documentary and other undisputed evidence elicited as of that time, ordered the dismissal of the plaintiffs' fourth cause of action, while also indicating "that any principle considered dispositive of the motion [to dismiss the fourth cause of action] would necessarily have some application to the other causes of action as well." (Memorandum and Order, dated August 2, 1972, p. 42.)

*not in
disregard
will answer
with motion
to be a
p. 42 1973*

UNCONTESTED FACTS

5. The specific uncontested facts in this action are

as follows:

(a) Plaintiffs constitute 100% of the shareholders of L.I. Reo, a New York corporation incorporated on November 3, 1960. L.I. Reo, and its predecessor, plaintiffs Thomas A. Vincel (hereinafter "Vincel") and Nuno Tardo (hereinafter "Tardo"), had been a dealer of Reo trucks since March 1959, then manufactured by the Reo Truck Division of defendant White. From L.I. Reo's formation until it became bankrupt, by petition filed under Section 4(a) of the Bankruptcy Act (11 U.S.C. §22(a)) Vincel owned more than half of its voting and non-voting stock and was its president and a director. Tardo, L.I. Reo's secretary and parts department manager and plaintiff William Breen (hereinafter "Breen"), the company's vice-president and service department manager, each owned about 15% of the voting stock and approximately 25% and 11%, respectively, of the non-voting stock. The wives of Vincel, Tardo and Breen, also plaintiffs herein, each owned one share of the non-voting stock. In addition, plaintiffs Joseph Rummo, L.I. Reo's day shift foreman, owned two shares of the voting stock, Rolf Hoeger, its night shift foreman, owned one share of voting stock, M.D. Aiello and P. Aiello, a mechanic with L.I. Reo, owned two shares of non-voting stock and LIRCO Credit Corp. owned five shares of voting and two shares of non-voting stock. So far as the evidence indicates, all of the plaintiffs' employment relations with L.I. Reo were without a definite term and terminable at the will of L.I. Reo.

also
had
capital,
insurance,
reserves

(b) Prior to the organization of L.I. Reo, plaintiffs Vincel and Tardo, doing business as the Long Island Reo Truck Co., (hereinafter the "partnership") signed a temporary distributors contract with the Reo Division of defendant White and that agreement was succeeded, about March 18, 1959, by a formal "Distributor Selling Agreement." After its incorporation, L.I. Reo signed a Distributor Selling Agreement with the Reo Division on the date of January 3, 1961, effective from December 22, 1960. Under date of March 1, 1963, L.I. Reo signed, effective from January 2, 1963, a dealer agreement with defendant White's Reo Motor Division. Under date of February 19, 1965, L.I. Reo entered into a Dealer Selling Agreement dating from December 9, 1964, with the Lansing Division of defendant White, which was amended by an instrument executed between defendant White and L.I. Reo on February 14, 1966, and was further amended under date of June 16, 1967, by instrument executed between L.I. Reo and defendant White's Diamond Reo Truck Division. All of the agreements between L.I. Reo and White were executed on behalf of L.I. Reo by Vincel except the February 14, 1966 amendment.

(c) Defendant White had acquired the Reo Division effective June 5, 1957, and the Diamond Division effective April 1, 1958, dates preceding that on which the partnership first became a Reo distributor.

(d) L.I. Reo financed its purchases of new Reo trucks and used vehicles through Universal C.I.T. Corp. (hereinafter "C.I.T.") pursuant to financing agreements entered into in 1962 and later in 1964. On December 27, 1962, White agreed to under-

write and guarantee L.I. Reo's financing and obligations with C.I.T. L.I. Reo was to pay C.I.T. the amount of the financed indebtedness immediately upon receipt of the proceeds of any sales of C.I.T.-financed trucks to retail customers. C.I.T. would verify that it was being paid for vehicles financed by it and which L.I. Reo had sold by conducting occasional surprise "car checks" on L.I. Reo's premises. Defendant White had agreed to take over all of L.I. Reo's paper on demand if L.I. Reo defaulted in its obligations to C.I.T. At all material times in question, there was in effect an agreement for wholesale financing between L.I. Reo and C.I.T. dated August 28, 1964.

(e) In addition, defendant White had agreed to finance L.I. Reo's substantial parts business on an open running ledger account. L.I. Reo executed a note dated October 28, 1965 to White in the amount of \$54,520.43, covering a portion of the parts account, which in October 1965 had reached the \$95,000 level. By November 1966, the indebtedness on the note had been reduced to approximately \$18,180.00.

2 (f) However, in November 1966 it was discovered that L.I. Reo was in default in its agreement with C.I.T. C.I.T. had determined through one of its surprise car checks that L.I. Reo was seriously "out of trust". That is, that L.I. Reo had sold at least eight trucks to retail customers but had not paid C.I.T. the amount of the indebtedness due. As a result of L.I. Reo's default, C.I.T. demanded that defendant White honor its guarantee and purchase from C.I.T. all of L.I. Reo's outstanding finance

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obligations. White, being obligated to do so, made arrangements with C.I.T. to honor its guarantee.

(g) The express obligation of defendant White under the December 27, 1962 letter agreement with C.I.T. was that White would purchase the floor plan obligations covering L.I. Reo's inventory of trucks upon any default by L.I. Reo. On the basis of an oral telephone demand by C.I.T. made upon defendant Kommer, the treasurer of the Diamond Reo truck division of White, defendant White became the assignee of the trust receipts or chattel mortgages on new and used floor plan trucks, and of the 1964 financing agreement between L.I. Reo and C.I.T., as well as of the obligations with respect to the vehicles out of trust, upon the payment to C.I.T. by White of \$476,850.24. That amount included the \$89,780.00 for vehicles allegedly "out of trust", \$268,653.01 for new trucks floor-planned and \$118,416.50 for used trucks floor-planned.

*out of trust
will be
taken care of
in his
account
book.*

(h) At the same time L.I. Reo's running account with White for parts was in debit balance of about \$100,000.00 as mentioned above, approximately \$18,180.00 remained unpaid on the note of October 28, 1965 and somewhat over \$90,000.00 was due in respect of L.I. Reo's obligations taken over by White from C.I.T. In conjunction with this, L.I. Reo had no "financing" to take the place of C.I.T. other than from defendant White. The indebtedness actually due defendant White by L.I. Reo approximated \$200,000.00.

(i) At the request of L.I. Reo's president, plaintiff Vincel, and in order to keep L.I. Reo solvent and in operation

neg. 20

White now assumed an active role in the oversight of L.I. Reo's business and in the actual conduct of its operations.

(j) Meetings, in which I participated, were held in New York at the offices of Reavis & McGrath in November 1966. As a result of these meetings and at the request of Vincel, represented by counsel (Eliot Lombard, Esq.), it was agreed that White would not then, as owner of the C.I.T. chattel mortgages and security agreement and trust certificates, repossess all of L.I. Reo's inventory, as it had a right to do. Instead, it was agreed that White would render assistance to L.I. Reo by forbearance of demand for the monies owed defendant White as C.I.T.'s assignee for the trucks which were sold and for which payment had not been made.

(k) As a consequence of these numerous meetings, and after Vincel admitted to me, in my office, that he was able to be "out of trust" for numerous periods of time by switching vehicle identification plates (and thus leading C.I.T.'s inspectors to believe that the financed trucks, which had in fact been sold, had not been sold), defendant White, L.I. Reo and plaintiffs Vincel, Tardo and Breen negotiated and entered into the Financing Agreement of November 23, 1966 and they and others entered into the Voting Trust Agreement of December 25, 1966.

(l) The Financing Agreement stated, among other things, that L.I. Reo and its shareholders had asked defendant White to forbear from presently demanding payment as assignees of L.I.

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Reo's obligations to C.I.T. and on the open parts account. Under the agreement, defendant White released L.I. Reo, the signatory shareholders and all other shareholders who joined the agreement and L.I. Reo and its shareholders released White and its divisions from all obligations except those dealt with in the agreement and collateral to it except for the balance due on the 1965 note.

*clear
to you
best*

(m) It was also agreed that White and its divisions owned chattel mortgages and trust receipts on L.I. Reo's trucks, formerly held by C.I.T., evidencing a net obligation by L.I. Reo to White of about \$372,421.29. The agreement then provided that the shareholders would enter into a voting trust of all of the shares of stock owned by them and their families in L.I. Reo and in four other companies - LIRCO Enterprises, Inc., LIRDO Credit Corp., Trojan Servicing Corp. and LIRCO Truck Leasing Corp. The voting trustee was to be "a person designated by White, to wit, [defendant] Glenn Kommer." The trust was to continue until L.I. Reo had fully paid the obligations dealt with in the agreement, and if 90 percent of each class of stock did not enter into the trust, White could declare the agreement at an end ab initio. It was next provided that if L.I. Reo was able to obtain a loan of \$50,000 on condition that it put up as collateral a majority of the voting stock of LIRCO Enterprises, Inc., such stock to be placed in the voting trust to be controlled by the lender, then White agreed to release the shares from the Kommer voting trust provided LIRCO Enterprises first reduced the total rent paid by

*White
made
good*

- 264A

L.I. Reo under leases covering the property in Woodside and Hauppauge to a maximum aggregate rental of \$3,000 a month for a period equal to the term of the voting trust.

(n) The agreement next provided that L.I. Reo would pay \$3,030 a month until the balance of \$18,180 due on the 1965 note of \$54,000 was paid off. In connection with the payment of the note, L.I. Reo agreed to return to White about \$20,000 of current excess parts, acceptance of the parts to be subject to White's approval and the credits allowed for the parts returned to be used to reduce the \$18,180 due on the note.

(o) It was next provided that L.I. Reo would simultaneously with the signing of the agreement execute a five-year 6-1/2% note, guaranteed by Vincel, for \$195,837.50, being the sum of the amount due on the open parts account and the \$90,168.20 due in respect of unpaid obligations which White had acquired from C.I.T. The note was to be paid off by adding \$500 to the net invoice price of each truck billed to L.I. Reo when the truck was delivered to the retail customer of L.I. Reo by White. All amounts received by White from C.I.T. as a result of L.I. Reo's release to White of its reserves with C.I.T. were to be credited on the note. All then existing amounts due from White to L.I. Reo and all amounts thereafter accruing as due to L.I. Reo from White during the term of the \$195,000 note by reason of warranty claims were also to be credited on the note.

(p) The five-year note for \$195,837.50 of L.I. Reo was to be secured by a chattel mortgage or other security instrument on all new and used trucks then or thereafter owned by L.I. Reo

except that White was to subordinate its security interest in favor of persons holding purchase-money security interests in after-acquired inventory. L.I. Reo also agreed to execute a chattel mortgage or other security instrument on all parts inventory. L.I. Reo agreed to do its best to get financing for working capital purposes by factoring its present parts inventory under a warehouse receipt or other program, and, in that event, White agreed to release its security interest in the present parts inventory. L.I. Reo also agreed to use its best efforts to finance its working capital and agreed that all future parts ordered from White would be ordered C.O.D.

(q) It was also provided in the Financing Agreement that no new truck should be ordered by L.I. Reo from White and that White would not have to deliver any trucks unless the order was accompanied by satisfactory proof that L.I. Reo had an identifiable retail customer for each truck and that the customer had a financing commitment to cover his purchase or would pay cash upon delivery. White was to have no obligation to place a truck order into production until it received such proof. White was to transport each finished truck to New York at L.I. Reo's expense and to deliver it to White's own regional representative, retaining title in White's regional inventory. At L.I. Reo's request a truck could be delivered to a body shop at L.I. Reo's cost for body work. Possession of the truck was to pass from White directly to the retail customer, and only when White received cash or the check of a financial institution or a retail customer made payable to L.I. Reo and endorsed to White.

If a check or cash so received plus the retail customer's down payment exceeded White's total invoice price for the truck (including the cost of delivery from the point of shipment), White was to transmit to L.I. Reo the amount of such excess. L.I. Reo was required to establish an escrow bank account for the deposit of down payments received by L.I. Reo from retail customers on new trucks ordered.

(r) By December 29, 1966, a Voting Trust Agreement had been entered into by defendant Kommer as trustee and the shareholders of L.I. Reo and four related corporations, LIRCO Enterprises, Inc., LIRCO Credit Corp., Trojan Servicing Corp., Inc. and LIRCO Truck Leasing Corp. The Voting Trust Agreement provided that no dividends or other distributions were to be paid by any of the corporations during the life of the agreement; that if the trustee resigned, White would designate a successor; and that if the trustee or any successor trustee left White's employment, White was empowered to name a new trustee. The trustee had exclusive voting rights in the corporations whose shares were deposited.

(s) The Voting Trust Agreement authorized the trustees to cause L.I. Reo's Board of Directors to appoint a general manager for L.I. Reo of the trustee's choice, his salary to be paid by the trustee who was to be reimbursed by L.I. Reo in the amount of \$8,400 a year or such lesser salary as the general manager received. There was a provision for releasing stock of LIRCO Enterprises, Inc. from the voting trust, if necessary to

secure a working capital loan of \$50,000 for L.I. Reo but only after LIRCO Enterprises, Inc. first agreed to reduce the total rent paid by L.I. Reo for the Woodside and Hauppauge properties to a maximum of \$3,000 a month for the term of the Voting Trust Agreement (subject to adjustment for taxes). Depositing and consenting shareholders agreed not to put L.I. Reo into bankruptcy or bring about an assignment for the benefit of its creditors or otherwise to seek debtor-relief by court action. The voting trust was to continue until L.I. Reo paid off the note of \$18,180.00 and the note of \$195,837.50 and had satisfied all obligations to White as assignee of the C.I.T. obligations taken up under White's agreement of December 27, 1962, with C.I.T. The trustee was not to have any compensation, but he was to be reimbursed for reasonable expenses, including professional expenses, and was not to be liable for anything arising out of the Voting Trust Agreement except for loss or damage caused by his willful misfeasance or gross negligence; the trustee was not required to give a fidelity bond.

(t) It was provided that neither the trustee nor the general manager was disqualified from being an employee, officer or director of defendant White, and that no contract or transaction between the various corporations, whose stock was being deposited, and White should be "affected or invalidated by reason of the fact that White is in any way interested in such transaction or contract."

(u) Deposits of shares were irrevocable but provision was made for death of the shareholders. It was provided that if L.I. Reo did not obtain the \$50,000 working capital loan, the trustee could then sell and lease back or otherwise encumber LIRCO Enterprises' properties or its stock to get a working capital loan of \$50,000 for L.I. Reo. It was provided that the trustee could nullify the voting trust if any stockholder of L.I. Reo, LIRCO Enterprises, LIRCO Credit Corp., Trojan Servicing Corp. or LIRCO Truck Leasing Corp. refused to consent to the Financing Agreement by the signatory shareholders or failed specifically to agree that he would be bound by the provisions of certain paragraphs of the Voting Trust Agreement - those relating to the suspension of dividend payments and other distributions, to the trustee's exercise of voting powers on the stock, to the issuance of new shares by the corporations involved, to the employment of the general manager, to the provisions for the working capital loan, to the term of the agreement, to the trustee's right to incur expenditures and charge them back to the benefited corporation, to the provisions protecting the trustee against damage claims except for willful misfeasance or gross negligence, and to the provisions respecting contracts or transactions between White and the L.I. Reo and affiliated corporations.

6. (a) In February 1967, before a general manager was appointed pursuant to the Financing and Voting Trust

Agreements, plaintiff Vincel issued some \$40,000 of checks in reduction of the indebtedness for trucks that had been sold. These checks were sent to White and they bounced. Notwithstanding this default under the Financing and Voting Trust Agreements, on or about February 21, 1967 White accepted another note in the amount of the dishonored checks and a consignment agreement and security instrument. The security instrument provided that, if L.I. Reo defaulted in the performance of any term of the agreement of November 23, 1966 or the note, or the security instrument, defendant White was authorized to enter L.I. Reo's premises, take possession of the secured property, and sell it with or without notice at private or at public sale, at either of which defendant White might itself purchase.

(b) In late January 1967, defendant White and Samuel Antelis (hereinafter "Antelis") reached an agreement under which Antelis would serve as general manager of L.I. Reo commencing February 6, 1967, for a salary of \$10,700 a year. Kommer wrote Vincel requesting him promptly to call a meeting of L.I. Reo's Board of Directors for the purpose of appointing Antelis as general manager of L.I. Reo. Defendant Kommer advised Vincel that Antelis's salary exceeded the \$8,400 for which White looked to L.I. Reo for reimbursement. A meeting of the Board of Directors of L.I. Reo was held on February 6, 1969 with Vincel, Tardo and Breen present. A resolution was adopted appointing Antelis general manager and authorizing the corporation's officers to pay \$700 a month on account of Mr. Antelis's salary commencing with February 1967. While L.I. Reo was, at least in the beginning, billed monthly for \$700 on account of Antelis's services, the

bills were not paid.

(c) The Voting Trust Agreement was terminated in late August 1967 through the resignation of defendant Kommer and the tender back to the depositing shareholders of their stock certificates. White indicated to the shareholders at that time, August 28, 1967, that it did not intend to appoint a successor trustee as of that date.

(d) In mid-August 1967 it had come to the attention of defendants White and Kommer that L.I. Reo was again seriously "out of trust" on vehicles that had been financed and that L.I. Reo had not paid White for the vehicles which White had manufactured and shipped to L.I. Reo at L.I. Reo's specific order. It was determined that L.I. Reo had disposed of trucks having an invoice value to L.I. Reo from White of about \$68,000, without accounting for and paying over the proceeds of sale to White.

(e) Defendant White thereupon commenced an action in the Supreme Court of New York County on or about August 25, 1969, against L.I. Reo and plaintiff Vincel for breach of their agreements and conversion of the trucks. An order of attachment against the assets of L.I. Reo was issued. Under the agreement between L.I. Reo and C.I.T., pursuant to the note given by L.I. Reo to White in November 1966 and pursuant to a security instrument dated February 21, 1967, defendant White had the right to take peaceful possession of L.I. Reo's inventory upon the default above described or at any time that White felt its security in danger. The sheriffs of New York City and Suffolk County

replevied, pursuant to a bond, approximately three vehicles which were not on L.I. Reo's premises but were at body shops being fitted with special bodies and attached L.I. Reo's parts inventory. The balance of the vehicles were removed peaceably and without legal process. L.I. Reo moved to vacate the attachment and writ of replevin. White cross-moved for permission to replevy the attached parts. Mr. Justice Frank denied L.I. Reo's motions and granted defendant White's motion.

(f) Shortly after Mr. Justice Frank's decision, and after the Voting Trust Agreement was terminated, L.I. Reo filed a voluntary petition in bankruptcy in this Court. White filed its claim in bankruptcy and the trustee in bankruptcy counter-claimed alleging that White had driven L.I. Reo out of business.

(g) White's claim presented in the bankruptcy Court and the trustee in bankruptcy's counterclaim, as well as White's claim in the Supreme Court action against L.I. Reo and L.I. Reo's counterclaim, were settled with the approval of Referee Warner and L.I. Reo's trustee in bankruptcy gave defendant White a general release. White's claim in the Supreme Court action against L.I. Reo and L.I. Reo's counterclaims were dismissed with prejudice after an order was entered in the Supreme Court action substituting the trustee in bankruptcy for L.I. Reo. Stipulations of discontinuance without prejudice of White's claim against Vincel for conversions and Vincel's counterclaim were exchanged. Under this general settlement L.I. Reo's estate in bankruptcy received \$100,000 from White. Thus, L.I. Reo, at

first represented by plaintiffs' present attorneys and then by counsel for the trustee in bankruptcy, had presented claims on its own behalf against White which are indistinguishable from the claims made by plaintiffs. Such claims were settled and released.

PLAINTIFFS' CAUSES OF ACTION AND DETAILED CLAIMS

7. Plaintiffs' complaint alleges six causes of action: (i) that defendants White and Kommer violated their contractual duties to plaintiffs under the 1966 agreements; (ii) that defendants violated their fiduciary duties to plaintiffs under the same agreements; (iii) that defendants coerced plaintiffs into entering these agreements; (iv) that defendants and other officers of White conspired to combine White's three separate truck divisions in 1966 and to drive out of business the dealers of two of its divisions, including L.I. Reo, by unfair competition and other anticompetitive practices; (v) that defendants violated their duty to plaintiffs under the Federal Automobile Dealers' Franchise Act (15 U.S.C. §§1221-25); and (vi) that defendants violated their duties to plaintiffs under a similar New York Statute (N.Y. General Business Law §197).

8. The Plaintiffs' answers to limited interrogatories indicate the following factual claims were made to specify their causes of action:

(a) Appointing defendant Kommer as trustee knowing that his office with defendant White conflicted with his obligation to the shareholders of L.I. Reo with the intent that Kommer would

subordinate the shareholder's intent to that of the interests of White as creditor-supplier, although it was the express agreement of all parties that Kommer would be the trustee notwithstanding his employment by White;

(b) Appointed Antelis general manager of L. I. Reo knowing that he was not qualified for the post by experience and intending that he would subordinate L. I. Reo's interests to those of White although a provision in the Voting Trust Agreement provided that the general manager need be acceptable only to the trustee;

(c) Refusing to honor valid warranty claims of L. I. Reo and draining L. I. Reo's cash by disallowing valid claims, failing to credit L. I. Reo's account for properly allowable amounts, refusing to pay cash for warranty work done on trucks sold by White direct and by dealers other than L. I. Reo to pay cash on delivery for parts ordered to replace defective parts in new vehicles, and threatening to cancel L. I. Reo's franchise if it failed to do warranty work on trucks sold through other dealers;

(d) Requiring Reo to pay cash on delivery for all parts ordered but allowing only credits for returned parts found to be defective (certainly not unreasonable considering L. I. Reo's admitted past history);

(e) Denying L. I. Reo routine and ordinary customer assistance given to other dealers of White;

(f) Avoiding contact and communication with L. I. Reo personnel so that normal relationships prevailing between manufacturer and dealer were impaired to L. I. Reo's detriment;

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(g) Giving "pedigree information" on L. I. Reo truck sales to "competing White dealers" thus reducing L. I. Reo's service work ("pedigree information" being information necessary to service trucks);

(h) Pirating customers from L. I. Reo by making direct factory sales and threatening to cancel the dealership when L. I. Reo complained (subsequent to L. I. Reo's bankruptcy petition, but which charge was also the subject of L. I. Reo's counterclaims in the bankruptcy court);

(i) In the period from February through August 1967 White and Kommer through Antelis allegedly caused L. I. Reo to overdraw its bank account, incur penalties for failure to pay federal taxes, overpay certain creditors, and allocated company funds improperly, so that L. I. Reo could not meet its contractual obligations to White, to other creditors and to customers and its cash position was impaired and destroyed;

(j) Between March and July 1967 sabotaging a program to set up a working capital financing program involving Bank of Commerce and the St. Louis Terminal Field Warehouse Company;

(k) Between April and August 1967 requiring L. I. Reo to pay by certified check for all parts picked up from White's Newark warehouse;

(l) Requiring L. I. Reo in April 1967 to pay over to White the proceeds of insurance on a stolen truck owned by L. I. Reo, although the cash was needed in the L. I. Reo business;

(m) In August and September 1967 placing armed guards

on the L. I. Reo premises and threatening plaintiff Vincel with arrest and commencing an action in the Supreme Court, first against L. I. Reo and later against L. I. Reo and Vincel, based on claimed breaches of contract and conversion of motor vehicles charged to L. I. Reo although the acts were done when White and Kommer and their agent Antelis controlled and managed L. I. Reo, attaching the motor vehicles, parts and bank accounts of L. I. Reo, and forcing L. I. Reo to discontinue business and file a bankruptcy petition;

(n) In September 1967 White and Kommer refused to release money from the L. I. Reo bank accounts that had been attached and thereby caused the arrest of plaintiff Vincel;

(o) Beginning before November 1966 and continuing to the date of the answers to interrogatories, conspiring to combine White's major truck divisions and to drive out of business the largest dealers, including L. I. Reo, who sold only Diamond T or Reo or Diamond Reo trucks so as to circumvent White's contractual and fiduciary obligations to L. I. Reo and its shareholders.

9. Plaintiffs also allege that defendant White, aided by defendant Kommer, White's employee, in order to effectuate a conspiracy to evade the contractual obligations of White to L. I. Reo and the trust obligations of White and Kommer to the plaintiffs, to destroy the business of L. I. Reo, and to cause injury to plaintiffs, claimed that its own acts, and those of its agents Kommer and Antelis in conducting the affairs of L. I. Reo,

constituted breaches by L. I. Reo of its agreements with White; specifically that acts by Kommer, White and Antelis were used as breaches by L. I. Reo, that is,

(i) the claimed default in the C.I.T. financing agreement of August 28, 1964;

(ii) the failure to pay the balance of \$110,294.15 due on the \$195,000 promissory note;

(iii) the alleged failure of L. I. Reo to give White possession of numerous vehicles pursuant to the security agreement of February 21, 1967 and the consignment agreement of the same date and the Financing Agreement and promissory note of November 23, 1966;

(iv) the failure of L. I. Reo to pay the February 10, 21, 1967 note in the sum of \$42,739.56;

(v) the claimed conversion of six (or seven or eight) motor vehicles in August 1967; and

(vi) the failure of L. I. Reo to pay the balance due on the note of August 28, 1965 (embraced in the November 23, 1966 agreement).

It is then alleged that using the breaches as a pretext defendant White, assisted by defendant Kommer, declared L. I. Reo to be in default, demanded possession of and seized all trucks and parts owned and possessed by L. I. Reo, demanded full payment of monies allegedly owing to White and took steps to enforce these demands, as a result of which L. I. Reo was forced out of business.

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PRIOR PROCEEDINGS

10. In 1969, after limited discovery, defendant moved to dismiss the fourth cause of action. On August 2, 1972, District Judge Dooling ordered the fourth cause of action dismissed, after reviewing the facts in the case, on the grounds that it was insufficient as a matter of law. Based upon Judge Dooling's extended discussion and analysis, it appears that he has viewed the facts and read the complaint presenting causes of action, if any, on behalf of L. I. Reo and not on behalf of the individual plaintiffs. As is shown by the accompanying memorandum of law, plaintiffs attempted corrective allegations in their proposed amended complaint that do not change this legal conclusion in the slightest manner. For example, on page 37 of Judge Dooling's memorandum and order, dated August 2, 1972, while commenting on the first cause of action, he states:

"...but the unchangeable gist of the wrongs alleged is damage to the business, property and prospects of L. I. Reo and only consequently were plaintiffs disadvantaged...."

With regard to the second cause of action, Judge Dooling stated that it "adds no assertion of facts." (p. 38)

Reading the discussion of the third cause of action, it is clear that the Judge viewed its additional allegations as adding nothing to what had gone before. (pp. 38-39)

In analyzing the motion to dismiss the fourth cause of action, Judge Dooling stated: "A difficulty in dealing with the fourth cause of action is that any principal considered dispositive of the motion would necessarily have some application to

other causes of action as well" and that the acts complained of in the first four causes of action as well as fourth relate "peculiarly [to] an injury to the corporation and only derivatively to its shareholders." (p. 42)

Further, Judge Dooling stated: "In the fourth cause of action no less than in any of the others the charge is of damage inflicted on L.I. Reo, its business, its affairs, its prospects, and its properties." (p. 61)

6. From these facts plaintiffs would have the Court infer a conspiracy on the part of defendants to injure them. But the only concrete interpretation that can be attributed to the facts is a tale of a business in serious financial difficulty which was given a second chance at life by defendant White which generously extended needed credit. Plaintiffs have repeatedly admitted that L.I. Reo was often and repeatedly "out of trust" with respect to trucks whose financing was guaranteed by White and that L.I. Reo and plaintiffs would, therefore, be indebted in substantial sums to White. Defendants continually gave L.I. Reo and plaintiffs additional time in which L.I. Reo could solve its financial problems to the extent of providing L.I. Reo with management advice, etc. Yet, now plaintiffs claim that the purpose of all this assistance and understanding was to drive L.I. Reo into bankruptcy and ruin the individual plaintiffs. If such had been defendants' aim, it could have easily accomplished its purpose when L.I. Reo defaulted on its obligations to C.I.T. White could have refused to extend any additional capital to

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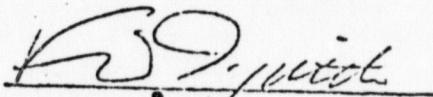
L. I. Reo and, as C.I.T.'s assignee, could have legally repossessed all of L. I. Reo's trucks and parts.

7. If in their efforts to assist L. I. Reo defendants have injured it, such injury was, as Judge Dooling pointed out, to L. I. Reo and only indirectly to plaintiffs because of their relationship to L. I. Reo. Any claim that L. I. Reo may have been able to assert has long ago been settled and released pursuant to the order of the Bankruptcy Court. Thus, plaintiffs are without capacity to bring this action in their own right and the claims of L. I. Reo have been satisfied.

8. From the foregoing it is clear the plaintiffs lack the standing to press this suit and that the action is without merit and, hence, that summary judgment on all of plaintiffs' causes of action should be granted to defendant and the burden of a trial avoided. As indicated in the accompanying memorandum of law, the proposed amended complaint adds no new facts to save the complaint from dismissal and, plaintiffs' motion for leave to file should be denied.

WHEREFORE, the moving defendant prays that summary judgment be granted against plaintiffs.

Sworn to before me this
26th day of February, 1973



FRED SQUITH
NOTARY PUBLIC, STATE OF NEW YORK
No. 7048000
Qualified in Kings County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS A. VINCEL, GRACE VINCEL, NUNO
TARDO, IRENE TARDO, WILLIAM BREEN,
VIRGINIA BREEN, JOSEPH RUMMO, ROLF
HOEGER, M. D. AIELLO, P. AIELLO and
LIRCO CREDIT CORP.,

69 Civil 753

Plaintiffs

- against -

WHITE MOTOR CORPORATION and
GLENN F. KOMMER,

Defendants

----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

THOMAS A. VINCEL, being duly sworn, deposes and

says:

1. I am one of the plaintiffs in the above action. I have personal knowledge of all the facts hereinafter set forth. This affidavit is submitted in opposition to defendants' motion for summary judgment and in further support of plaintiffs' pending motion to permit service of an amended complaint.

2. My attorneys have advised me that summary judgment may be granted only if there is no material question of fact to be determined upon trial. I respectfully submit that there are many material questions of fact that are in dispute.

3. Stephen R. Steinberg's affidavit of February 26, 1973 sets forth fifteen pages of what he labels as Uncontested Facts (pp. 3 - 18), and five pages of what he labels Plaintiffs' Causes of Action and Detailed Claims.

4. I shall not make a point by point refutation of Steinberg's affidavit. I respectfully submit that a detailed narrative of material events that took place between 1959 and 1967 relevant to the causes of action herein will make it clear to this Court that defendants' motion for summary judgment should be denied.

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5. In 1959 plaintiff Nuno Tardo and I (with Henry Lanz, who left us in 1964) commenced doing business as partners, as the Long Island Reo Truck Co. At that time a division of defendant White Motor Corporation (hereinafter "White") was known as Reo Motor Truck Co. On or about March 18, 1959, a formal distributor selling agreement was entered into by Nuno Tardo and myself with the Reo Motor Truck division of White. In 1960 the partnership became a corporation and we became known as Long Island Reo Truck Co. (hereinafter "L. I. Reo"). On or about January 3, 1961 we entered into the first of a succession of distributor selling agreements with the Reo Motor Truck division of White and, after its merger with White's Diamond T Truck division, with the Diamond Reo Truck division of White.

6. From our commencement of business in 1959 through 1964, plaintiff Nuno Tardo and I (with the said Henry Lanz) were the sole partners in Long Island Reo Truck Co. and then the principal shareholders, officers, directors and employees of L. I. Reo. From a modest beginning in 1959, we quickly became the world's second largest Reo Truck outlet. White was so impressed with our tremendous sales effort and performance that White wrote an article in a national

distributor's magazine called the Reo News. Attached hereto as Exhibit A is a portion of the July 1962 Reo News which contains an article describing L. I. Reo and a special award given to us as the outstanding distributor for the year 1960. The trophy was presented to me at the annual Reo Distributor Conference attended by most of the Reo dealers then in business. Our business continued to grow, and in 1962 we bought out Suburban Automotive Service, Inc. which had been doing service work for us, and one of its principals, plaintiff William Breen, became a shareholder, officer, director, and employee of L. I. Reo.

7. In 1966 plaintiffs Joseph Rummo, Rolf Hoeger and P. Aiello, who were then employees of L. I. Reo (its name changed by then to Long Island Diamond Reo Truck Co., Inc.), all purchased a small amount of shares. In 1967 various small amounts of stock were issued and sold for cash to plaintiffs Virginia Breen, Irene Tardo and Grace Vincel, wives of the three principals. At that time defendant Kommer, acting for White, held 85% of the voting stock of L. I. Reo, and plaintiffs William Breen, Nuno Tardo and I held voting trust certificates issued by Kommer. The fact that we issued^o stock to our wives and paid cash into the corporation for such stock is an indication that we were acting in good faith in our dealing with White and Kommer.

8. When I was presented with an award as the outstanding distributor of the year, George Collins, general

sales manager for the Reo division of White, stated that our outstanding sales performance was made even more noteworthy because we were able to achieve our success with minimal working capital. During this time Nuno Tardo and I had been in constant communication with Leo DeCardy, who was the Treasurer of the Reo division of White, concerning our financial situation and working capital problems. DeCardy had requested and had received frequent L. I. Reo financial statements and was fully familiar with our financial situation.

9. Late in 1962 I went to the Lansing, Michigan office of White and after discussions and conversations with DeCardy and Collins it was agreed that White would guarantee our indebtedness to C.I.T., who was financing our trucks. This guarantee was given because White admitted that we needed capital, and concluded that the best way to insure that we continue to sell Reo trucks and maintain the position of White in the market was for White to assist us. At that time DeCardy told me that everybody at White knew that L. I. Reo was floating. (Floating in the auto and truck industry is done by most or all dealers. Dealers who float hold back payments to financing agencies on the sale of vehicles for a relatively short time after the due dates, in order to maintain a sufficient bank balance and to have working capital.)

10. At that time DeCardy said to me that examination of our financial reports indicated that we were floating for approximately \$100,000. He told us that we should

never float more than \$100,000, and that if we were ever caught floating more than \$100,000, White would close us down so fast that "you will lose your breath". At no time up to and including the liquidation of L. I. Reo by White in 1967 did our float ever exceed \$100,000.

11. On December 27, 1962, White agreed to underwrite and guarantee L. I. Reo's financing obligations with C.I.T. This guarantee was given by DeCardy because he knew that we could deliver the sales volume and would keep our word as to never floating in excess of the \$100,000 figure.

12. In 1965 DeCardy, Collins and many other top Reo division executives (including the President of the Reo division) left White to go to work for Mack Trucks. DeCardy's place was taken by one or two other men who never made any mention of the float. In June 1966 defendant Glenn Kommer of the Accounting Department became the Treasurer of the Reo division of White. Within a short time Kommer was telling us that we should stop floating. I pointed out to him that the float was necessary, and that DeCardy had approved it. He said that he was the Treasurer now, and that there should be no floating. I told him the L. I. Reo required time to eliminate the float, which would necessitate additional capital. I pointed out to him that White had approved the float, that we had relied upon White's approval, and that a float cannot be eliminated overnight. I promised him that we would do our best to obtain additional capital and eliminate the float.

13. ~~My~~ attempts to raise such capital were unsuccessful. I returned to Kommer in the early fall of 1966 and told him that it would be to White's advantage to lend us the money. I agreed to personally guarantee the debt. Kommer stated that White did not lend money and that he, as Treasurer, must protect the assets of the company. Kommer said that unless we stopped floating he would "car check us to death."

14. In November 1966 car checks by C.I.T. (which I believe were instigated by Kommer) showed that we were out of trust (under \$100,000). White was not surprised by this. In fact, White had guaranteed the obligations of L. I. Reo to C.I.T. with full knowledge of the float.

15. On the morning of November 2, 1966, I came to work and found that White, with armed guards, had seized the L. I. Reo premises, trucks, cash, mail, records, and motor vehicle title books. Stephen H. Steinberg, White's local counsel, came to the premises and said to me that since we were out of trust he had to seize the assets and take control of the franchise. He said that he would call later to set up an appointment to discuss the finalization of the takeover. At about 3:00 P. M. someone called us on behalf of White and informed us that they would be willing to meet with the principals of L. I. Reo at the LaGuardia Airport Restaurant that evening.

16. That evening Nuno Tardo, William Breen and I met with representatives of White in the restaurant. White

was represented by Kommer, Steinberg, Neil Cochrane, Albert Coppack, and Robert Cummins. Steinberg, who dominated the meeting, requested a mutual agreement between White and L. I. Reo to end the dealership and cancel the franchise. He accused Tardo and me of stealing assets of L. I. Reo and planning to put L. I. Reo in bankruptcy. He repeatedly inquired of us whether we were planning an anti-trust action against White. In addition, he threatened Tardo and me with criminal prosecution. We arranged to meet the next day at Steinberg's office.

17. That night at approximately 2:00 A. M. I received a phone call at home from Albert Coppack, who said to me that if we did not agree to Steinberg's demands the next day, we would be arrested before we left the building.

18. The next day we met at Steinberg's office in New York City. The same requests, accusations, and threats were made by Steinberg, but Tardo and I said that we would say nothing more and do nothing until we were represented by counsel. On November 4, accompanied by Eliot Lumbard, Esq. of Townsend and Lewis, we again attended a meeting at Steinberg's office. After a re-hash of what has been said before, with reference to threats of cancellation of franchise and criminal prosecution, it was agreed that no action would be taken until the following Monday morning, which was November 7.

19. On November 7 we again met at Steinberg's office. At that time Steinberg advised us that the sheriff

was on his way to put L. I. Reo out of business. We told Steinberg in no uncertain terms that he had breached his agreement of November 4, and that he and White were acting dishonestly and in bad faith. We were very angry. Apparently Steinberg and the other White people at the meeting had second thoughts, and in our presence Steinberg telephoned Donald Heinisch, the President of White's Diamond Reo division. After his conversation with Heinisch, he rescinded his orders to the sheriff.

20. During the following several days there were continued meetings. The discussions centered around the conditions that White would impose upon continuing the franchise of L. I. Reo. In effect, we were pressed to sign agreements that Steinberg had prepared, on a take-it-or-leave-it basis. Steinberg insisted upon the establishment of a voting trust with Glenn Kommer as Trustee, and upon the employment of a General Manager of L. I. Reo to be responsible and answerable to Kommer and White.

21. On November 10 Lumbard and I went to Lansing and met with several of White's top Diamond Reo executives. The discussion continued and resulted in finalization of the Financing Agreement and Voting Trust Agreement. At the November 10 meeting in Lansing, I strenuously objected to the fact that the General Manager was not named in either agreement. I was assured by Donald Heinisch that the General Manager would be Wally Ausbach, an experienced truckman who had a fine reputation. I stated that Tardo, Breen and I

were effectively signing away control of L. I. Reo to White, and that we were at the mercy of White. I objected to the requirement that I personally guarantee L. I. Reo's obligations to White, but they made it clear that I had no alternative. I told them that they were putting themselves in such complete control that if things did not work out, it would be nobody's fault but theirs. I was assured by the White representatives that the Financing Agreement and the Voting Trust Agreement were the best thing for White and for L. I. Reo. The Financing Agreement of November 23, 1966 is attached to plaintiffs' complaint as Exhibit A. The Voting Trust Agreement of December 29, 1966 is attached to plaintiffs' complaint as Exhibit B.

22. The parties to the Financing Agreement were White, L. I. Reo, Nuno Tardo, William Breen, and myself. The parties to the Voting Trust Agreement were Kommer, Nuno Tardo, William Breen, myself, and other persons and corporations (including L. I. Reo, Irene Tardo, and Virginia Breen) as holders of voting stock of corporations affiliated with L. I. Reo. When the Voting Trust Agreement was executed, Glenn Kommer acting for White became the majority shareholder in L. I. Reo and its affiliated companies.

23. Though I will not discuss the Agreements, there are two provisions of the Voting Trust Agreement that were of special importance to me:

(1) the Trustee's Agreement in Paragraph 4 "... that during the term of this Agreement, he will not cause any of the corporations to be dissolved or totally or partially liquidated without having received the prior written consent of the signatories." and,

(2) the provision in Paragraph 14 that the Trustee would be liable to holders of Voting Trust Certificates for "... such loss or damage as the Voting Trust Certificate holders may suffer by reason of his willful misfeasance or gross negligence."

I believed that the first provision quoted above was intended to and did protect Tardo, Breen and me from the destruction of our business as threatened by White earlier in the discussions.

24. Following the execution of the Voting Trust Agreement Kommer, contrary to Donald Heinisch's agreement to hire Wally Ausbach as General Manager, hired Samuel Antelis as General Manager. Breen, Tardo and I immediately complained to Kommer and told him that Antelis seemed like a nice enough person but he had no experience in the truck business and that it was wrong to put someone who had no experience in the truck business in charge of White's leading dealer of Diamond Reo trucks. Kommer told me that it was his choice, that he was running L. I. Reo, and that he would make sure that Antelis did a good job.

25. Upon Antelis' taking over as General Manager, I stopped acting as General Manager and devoted myself to selling trucks. I felt secure to the extent of knowing that all I had to do was sell trucks. The financial problems of L. I. Reo would be taken care of by Kommer and his man, Antelis.

26. Antelis took charge of personnel and made all decisions concerning our credit policies and banking policies. He was in complete charge of the bank accounts and other

financial affairs of L. I. Reo. He made the deposits, wrote and signed virtually all checks and took care of the payroll. The accounting and bookkeeping departments of L. I. Reo were run by Antelis. All trucks ordered from the factory were ordered in his name. Antelis confirmed the receipt of trucks and truck deposits. Indeed, White referred to Antelis and regarded him as White's Regional Representative. Antelis' salary was paid by the Trustee out of funds supplied by White.

27. Within a short time it became clear to us that the Voting Trust Agreement which put White, Kommer and Antelis in control of L. I. Reo was threatening to destroy the dealership. It became clear that White's interest was not to help L. I. Reo, but rather to keep L. I. Reo in business long enough for the White branch in the area to take over as much business as possible that had been conducted by L. I. Reo. During this period it was White's purpose to get as much money as it could out of L. I. Reo's sale of trucks and the payment of prior indebtedness, and simultaneously enable the White dealer in the area to take over the sales and service of Diamond Reo trucks.

28. In August 1967 White sent to its White truck branches and dealers a notice dated August 25, 1967, a copy of which is attached as Exhibit B. White had arranged for the production in Lansing of Diamond Reo trucks with the White name, instead of Diamond Reo, on the radiator grill, and for the marketing of such trucks by White branches

and dealers.

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29. During the nine months December 1966 through August 1967 my sales staff and I sold 65 new Diamond Reo trucks. During those nine months L. I. Reo paid White \$32,500 on the basis of \$500 for new trucks sold, and more than \$55,000 from other sources, reducing the debt of L. I. Reo to White by more than \$87,500.

30. We sold 62 of those 65 new Diamond Reo trucks during the eight months January through August 1967. For those 62 trucks L. I. Reo paid White more than \$687,500. During this same eight months L. I. Reo paid White, for parts more than \$101,500. During those eight months, in addition to payments credited against the debt of L. I. Reo to White, L. I. Reo paid White more than \$789,000 for trucks and parts.

31. Despite the \$87,500 reduction of debt and the \$789,000 paid to White for trucks and parts, White and Kommer through their man Antelis caused a continuous and growing drain on L. I. Reo's cash and working capital, in violation of their contractual and fiduciary obligations to Tardo, Breen, and me, as follows:

(a) White and Kommer refused to honor valid warranty claims upon trucks repaired and serviced by L. I. Reo, thus causing a drain on L. I. Reo's cash, by:

(i) disallowing valid claims either fully or partially.

(ii) allowing claims but failing to credit L. I. Reo's account for the proper amounts.

(iii) refusing to pay cash for warranty work done on trucks sold directly from the factory and by other Diamond Reo dealers.

(iv) requiring L. I. Reo to pay C.O.D. for parts to correct mis-manufactured parts in new vehicles.

(v) threatening to cancel L. I. Reo's franchise if it refused to do warranty work on Diamond Reo trucks that had not been sold by L. I. Reo.

(b) White and Kommer required L. I. Reo to pay C.C.D. for all parts orders prior to inspecting the contents of said orders. Defective and incorrect parts were returned to White, and L. I. Reo received a credit. The cash payment was not refunded. The aforesaid C.O.D requirement was a further drain on L. I. Reo's cash.

(c) Between November 1966 and August 1967, inclusive, White and Kommer refused to give L. I. Reo the normal, routine usual and ordinary customer assistance given by White to other Diamond Reo and White dealers.

(d) Kommer and other White executives concerned with L. I. Reo deliberately avoided contact and communication with any L. I. Reo employee or officer so that the normal routine, usual and ordinary relationship between manufacturer and dealer was impaired, all to L. I. Reo's detriment.

(e) Kommer and White made pedigree information on L. I. Reo trucks available

to competing White dealers and reduced

L. I. Reo's service business.

(f) Kommer and White, through direct sales from factory to customer at discounts, pirated customers from L. I. Reo and reduced L. I. Reo's sales. Complaints by L. I. Reo were met with threats of franchise cancellation.

(g) Kommer and White through their agent, Antelis, caused L. I. Reo to overdraw its bank accounts, to incur penalties for failure to pay federal taxes, to pay certain creditors of L. I. Reo sums in excess of the amounts actually due to said creditors, and otherwise allocated funds of L. I. Reo improperly so as to prevent L. I. Reo from meeting its contractual obligations to White, to other creditors of L. I. Reo, and to customers of L. I. Reo and so as to impair and destroy the cash position of L. I. Reo.

(h) Kommer and White sabotaged and destroyed a parts inventory warehouse receipts program of L. I. Reo formulated pursuant to the Agreement dated November 23, 1966, after that program had been approved by the warehouse company and the financial institution concerned therewith. Said parts inventory warehouse receipts program was designed to

solve and would have solved the cash problem of L. I. Reo. It required White pursuant to White's commitments set forth in paragraph 7 of the Financing Agreement, to release its security interest in the parts inventory of L. I. Reo and to execute documents required by said financing institution. Kommer and White failed and refused to release such security interest and to execute such documents, in violation of said agreement.

(i) Kommer and White, in violation of their agreement and their practice prior to April 1967, required L. I. Reo to pay by certified checks for all parts picked up by L. I. Reo from White's Newark warehouse, intending to prevent and preventing L. I. Reo from effectively operating its service department.

(j) During the month of April 1967, Kommer and White failed and refused to pay over to L. I. Reo the proceeds (approximately \$4,000) of insurance on a stolen truck owned by L. I. Reo, said proceeds having been received by White, belonging to L. I. Reo, and needed by L. I. Reo to meet its obligations to creditors and customers.

32. Between February 6, 1967 and August 25, 1967 Kommer and Antelis were in almost daily communication with

each other. During this time Antelis, on several occasions, complained to me that he could not run L. I. Reo without floating. I told Antelis that Kommer had prohibited floating, and that he should not float. I advised him to speak with Kommer if he had problems about floating. During this time L. I. Reo maintained a separate truck account. All down-payments on trucks and monies received when a truck was sold were deposited in the truck account. While checks drawing funds from the truck account required two signatures, Antelis had complete control of the account. He decided what checks would come out of the account, drew them himself or had someone draw them for him, and he would present them to one of three or four people authorized to countersign the checks. To the best of my knowledge and recollection, almost 100% of the checks drawn on the truck account were signed by Antelis. He was the only one who knew what was going on in the truck account. I assumed that Antelis, who was Kommer's man, was paying for all the trucks when they were sold out of the proceeds of sale. In addition, I assumed he was paying the \$500 surcharge required by the Financing Agreement.

33. Several days prior to August 25, 1967, White sent Garth Collins, a factory regional representative, to check on the inventory of trucks that had been assigned to Antelis for which Antelis was responsible. After a thorough examination of inventory and records at L. I. Reo, Collins informed me that several trucks had been delivered to customers without the proceeds being forwarded to White. I said that there must be some mistake and that I was certain

that Antelis had paid for all the trucks. I told Collins, "I do not handle the money. I only sell trucks." I told him that Antelis handles the deposits and withdrawals from the truck account and I repeated that there must be a mistake. In front of Collins, I called Antelis on the phone and told him that Collins had completed his inventory and wanted to be paid for several trucks that had been sold. Antelis replied, "Good God, I do not have the money." I then said to him, "What do you mean? You were paid for the trucks. What did you do with the money? You've got to pay the man." Antelis hung up the phone without any further conversation, and within a minute or two he appeared in my office and told Collins and me that he was in trouble. I remember asking him very clearly, "Can you or can you not pay White for the trucks that were sold for which you received the money?" His answer was "No". I asked him what he had done with the money and he did not reply.

34. Collins recognized that he was faced with a serious problem, and he asked me if there was anything that I could do to resolve it. I told him that I was not the manager, and that control was in the hands of Kommer and Antelis. I told him that I was shocked to find out that Antelis had not paid for the trucks. Neither I, nor Breen, nor Tardo knew what was going on financially, except in a general way. Antelis was the only one who knew what disbursements were made from the truck account. Contrary to what Steinberg says in his moving affidavit (p. 16, ¶6(d)) L. I. Reo was not out of trust. Kommer, Antelis and White

were out of trust. Steinberg's affidavit attempts to make L. I. Reo into a wrongdoer. The wrongdoers who did not live up to the obligations of the Financing Agreement and the Voting Trust Agreement were Antelis, Kommer and White. White was using its acts -- the acts of Kommer and the acts of Antelis -- to claim a breach and destroy L. I. Reo.

35. Antelis, Kommer, and White were out of trust on several trucks for a total of approximately \$68,000. If they had lived up to the commitments and obligations of the Financing Agreement and the Voting Trust Agreement, they would not have been out of trust. One of the cardinal points of the Financing Agreement of November 23, 1966 is contained in Paragraph 7, whereby White agreed in the event L. I. Reo procured warehouse financing for its parts, White would release its security interest and execute all documents required by the lending institution to accomplish the financing. Early in March 1967, Tardo and I started to look for such financing and we succeeded in obtaining a commitment from the St. Louis Warehousing Company and the Bank of Commerce to give us approximately \$75,000 in credit. The commitment required physical alterations to our parts warehouse so that it could be considered a bonded warehouse. Several thousands of dollars were expended, and the alterations were approved, in writing, by the St. Louis Warehousing Company. We planned to and they were prepared to be in operation no later than May 1967. Such financing would have generated working capital provided by the Bank of Commerce,

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equal to approximately 75% of the physical inventory of approximately \$100,000. It is needless to say that the working capital was desperately needed by Antelis. The \$75,000 we could have obtained is in excess of the amount for which Antelis was out of trust.

36. After we secured the approvals and made the necessary physical changes to our parts warehouse, Antelis made dozens of phone calls and wrote several letters pleading with the Trustee to execute the standard documents required by the St. Louis Warehousing Company and the bank so that he could start the program and obtain working capital. His efforts were continually frustrated. I personally went to the Bank of Commerce with Antelis on several occasions and found the bank officers were also becoming frustrated by White. Charles Smith, Vice-President of the Bank of Commerce, who had made several calls to Kommer finally informed us that from his experience he was talking to a man (Kommer) who did not want to sign an agreement and that White was stalling. The situation became so desperate, that Tardo and I flew to the factory in the month of June in an endeavor to get White to live up to its agreement concerning the warehousing.

37. Our welcome at the factory was the coldest, most discourteous one that we (former star producers and recipients of the Outstanding Distributor of the Year Award) had ever experienced. The President of White's Diamond Reo division, Donald Heinisch, refused to allow me to enter his waiting room or office. He would not come out to see me,

and would not even talk to me on the telephone. Kommer, who I was informed was in his office, had disappeared somewhere in the factory, and was not to be found. After much searching and roaming about we finally located Kommer in an office on the second floor where he sheepishly greeted us with a "Hi". I reviewed the whole problem of warehouse financing for him and asked him flatly, "Are you or are you not going to execute these documents needed for the financing." He answered, "I'm sorry to tell you, Tom, I honestly want to sign it but I can't." I asked him why since he was the Trustee and major stockholder of L. I. Reo who had agreed in writing to do so. Kommer replied that he had been told by his superior that he should not sign. I asked Kommer who the real Trustee was since obviously he was following the orders of some higher-up. He told me that the party making the decision was a Mr. Darrow, in Cleveland, who I believe was the Treasurer of White at that time. At the conclusion of this meeting with Kommer, there was very little doubt left that we had been originally sold a bill of goods. We had been suckered into signing away our voting rights to a Trustee who promised many things but intended to do nothing to help us.

38. On August 25, 1967 after a routine morning, a salesman and I returned from lunch, at approximately 2:00 P. M. and found a large group of men in my private office. It consisted of Kommer, Steinberg, a sheriff, several other lawyers, and several truck drivers. Before I had a chance to sit down or greet anyone, the sheriff asked

me my name and then proceeded to hand me a thick document that commenced a lawsuit in the Supreme Court, attached our bank accounts, seized our trucks, and shortly thereafter, forced us out of business and into ultimate bankruptcy. Kommer, our Trustee and the major shareholder of L. I. Reo, verified the complaint. At the time the sheriff handed me the papers he said that he would give me a few minutes to read them, but he assured me that they gave him the right to start removing all the trucks and other assets at once. I turned to Kommer, who had been silent throughout and said, "Glenn, can we discuss this?" He answered, "No, Tom, I would not do it this way but I must do what I am told, and I am told this is the way. Mr. Steinberg wants it done." I unsuccessfully pleaded for a few minutes to contact my attorney, Eliot Lumbard, who I knew was out of town. Realizing that nothing could be done, I proceeded to assist the Trustee and the sheriff in the takeover.

39. The bankruptcy proceeding is a matter of public record. L. I. Reo had no choice but to file in bankruptcy after White took its trucks and inventory at the end of August. It is worth noting that general creditors received seventy cents on the dollar when the final dividends were paid. It must also be noted that in the bankruptcy proceeding, White paid \$100,000 to L. I. Reo and gave up its claims for more than \$300,000, to settle with general creditors the claims asserted by the bankruptcy Trustee, on their behalf, against White. That settlement provided

most of the \$136,293.59 paid out: to preferred creditors - \$3,879.38, to general creditors - \$95,692.15, and to the Trustee and his counsel - \$36,722.06.

40. The bankruptcy settlement was approved by Referee Sherman Warner over my objections and those of other plaintiffs in the lawsuit. The bankruptcy took care of creditors of L. I. Reo, but provided nothing for stockholders. Releases and discontinuances were filed, but the rights of White against me and my rights against White were specifically excluded from any settlement and have been preserved. The state court action between White and L. I. Reo was discontinued with prejudice, but the state court action between White and me was discontinued without prejudice.

41. The destruction of L. I. Reo was not sufficient for White. It continued its illegal acts directly against me. A truck had been sold just prior to their seizing the company assets in August. Antelis had received the purchase price and deposited it in the truck account. The account was seized at the time of the August 25 takeover. I informed Steinberg of Antelis' indebtedness to Tinker National Bank on this truck since Tinker National Bank who financed the truck was contacting me personally and asking for payment. Steinberg who had control of the bank account, illegally refused to pay the bank, even though I told him that it was threatening me with felony charges and arrest. Steinberg's response was in four-letter words to the effect that he did not care what happened to me, and that neither

he nor White was going to pay Tinker, out of the seized truck account.

42. I was arrested, fingerprinted, and mugged, and placed in jail for the better part of a day. To this day I have yet to receive the mug shots, records and other files the Police Department has, even though there has been a complete dismissal of all charges against me. The particular vehicle in question was listed on the schedules of the original Financing Agreement and Voting Trust Agreement and Kommer and Antelis were fully aware of the mortgage on the vehicle. There was no question that payment was due to Tinker out of monies received by Antelis from the purchaser prior to the August 25 takeover. The failure to make the payment after my notice to them was a malicious and ruthless act.

43. As indicated below, L. I. Reo was a dynamic and growing business despite its many problems:


<u>Fiscal Year</u>	<u>Gross Sales</u>
10/1/61 - 9/30/62	\$1,870,508.79
10/1/62 - 9/30/63	2,544,295.13
10/1/63 - 9/30/64	2,259,816.73
10/1/64 - 9/30/65	2,710,131.38
10/1/65 - 9/30/66	2,961,625.58

In each of the fiscal years ending September 30, 1963, September 30, 1964, September 30, 1965, and September 30, 1966, L. I. Reo's gross sales were more than \$2,000,000. Only the mismanagement of L. I. Reo by White and Kommer prevented L. I. Reo from exceeding gross sales of \$2,000,000 in the fiscal year ending September 30, 1967.

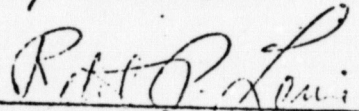
44. The trucks allegedly out of trust in August 1967 had all been sold when Kommer was the controlling shareholder and Trustee of L. I. Reo; when Antelis, White's Regional Representative and the General Manager of L. I. Reo, received the proceeds of sale and failed to remit to White. It was not L. I. Reo -- it was Antelis and Kommer who failed to remit to White.

45. The defendants' moving papers request the Court to ascertain what material facts are actually in issue in this case in the event summary judgment is not granted. The plaintiffs submit that summary judgment cannot be granted and we join in the latter part of the defendants' request. The plaintiffs are most anxious to know which of the facts set forth in this affidavit are actually controverted by the defendants..

WHEREFORE, I respectfully pray that defendants' motion for summary judgment be denied.


Thomas A. Vincel

Sworn to before me this
17 day of April 1973.


Notary Public

ROBERT W. [unclear]
Notary Public State of New York
No. 46-12721
Qualified in Westchester County
Commission Expires March 31, 1976

304A

July, 1962

REO news

In this issue:

Automation Comes to the Asphalt Industry



Popularity of Reo Diesels records major increase.

EXHIBIT A

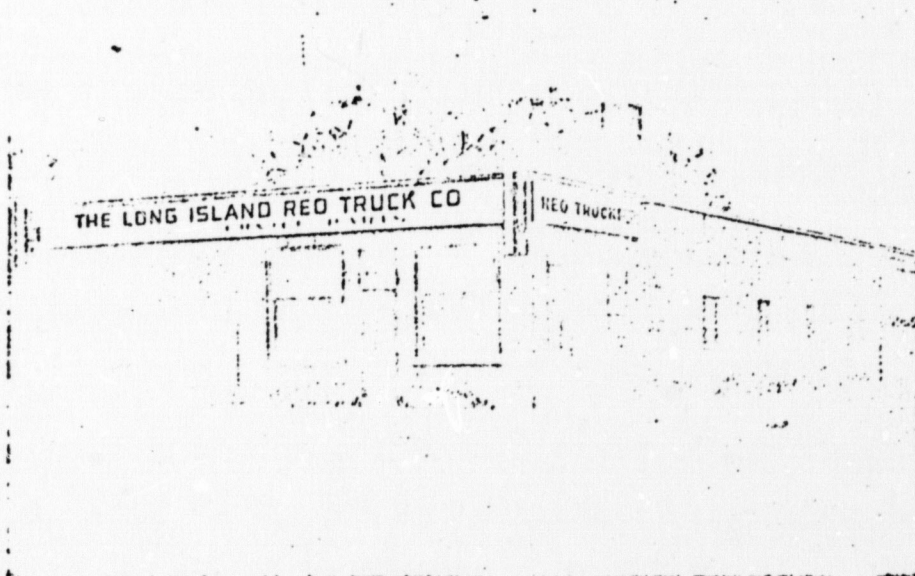
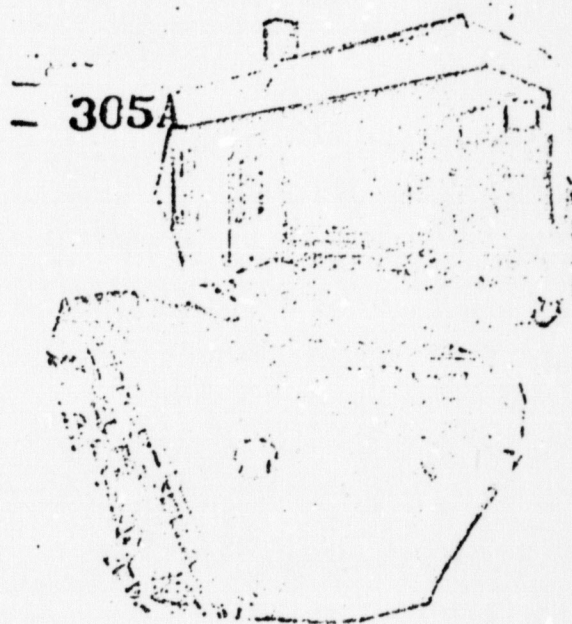
From this Inauspicious Beginning . . . A Compact and Efficiently Operating Reo Sales

Horatio Alger couldn't hold a candle to Tom Vincel, Nuno Tardo and Henry Lanz of Long Island Reo. Their success story is more amazing than any of the story book exploits of the renowned Mr. Alger.

They began writing their saga only 3 years ago, when they pooled their talents and limited resources to form a partnership and open a Reo sales and service organization in Long Island, New York.

All three had been associated with Reo's former New York branch and were anxious to re-establish Reo trucks in Gotham. They saw the great potential of a Reo distributorship but were hampered by the lack of financial resources to launch such a major undertaking. The key to the problem was finding a location that would serve their initial needs. After a long search they finally located an abandoned coal yard that could be leased for a reasonable sum and on which the owner agreed to construct a building shell which they would finish.

In addition to the ancient wooden coal hopper which was of no use, the only other structure on the property was a very small office with no heat, electricity or water. After cleaning out the inch thick coal dust they were able to begin operations.



One of the first steps that had to be taken was the demolition of the coal hopper. Lacking the finances to have the job done, they did it themselves, at night and on Sunday when they weren't working to build up the sales and service business.

Next on the agenda was the construction of a 9000 square foot parts building, and by late spring of 1959 the parts center was complete and they received their first shipment of parts. By the end of the year the parts inventory grew to \$20,000 with a two month turnover rate.

In order to keep pace with their expanding business, Tom, Henry and Nuno kept building bins, racks and other equipment to provide proper storage facilities. Claiming no special skills at the outset, they soon acquired a high degree of skill with the hammer and saw.

In addition to razing the coal hopper they were also confronted with an overhead railroad. Again, being in no position to hire workers to tear it down, they began working nights and Sundays themselves. The railroad was moved 40 or 50 feet off their property,

A Service Center

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The large, efficient, hand-built parts department.

but still there remained the trestle, which was built on high cement pillars, the railroad ties and tracks.

Working steadily these three amazing men completely tore down the trestle — tore up the tracks and ties — and, using cutting torches cut apart the steel framework which had supported the trestle. All that was left then — and by no means minor obstructions — were the cement columns. Large holes were dug around the base of each pillar and then, using an old truck with the back loaded with scrap steel for balance, the columns were pulled to the ground and buried in the yard!

With their physical plant in good working order they began to devote most of their abundant energies to building up their sales and service business. Fighting for business in one of the most competitive sales areas in the country they literally worked night and day to convert owners of competitive units to Reo. Their sustained efforts brought rewarding results. Today 92 percent of the independent garbage collectors in the Long Island area are Reo owners. Fuel oil fleet operators, in great numbers, use Reos, too.

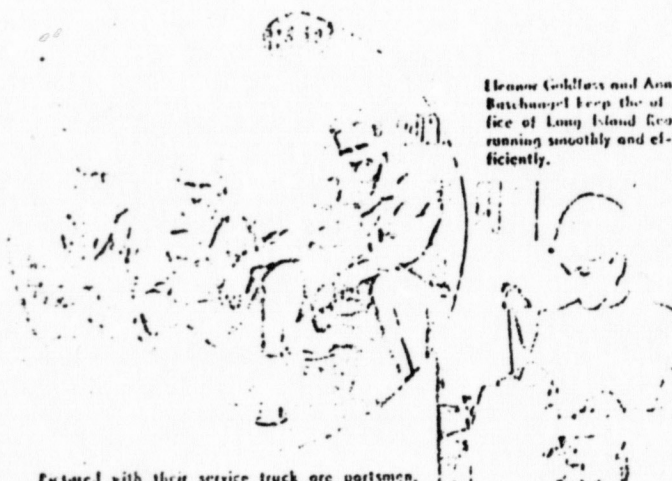
Each of the three men has his specialty. Tardo is the parts and service specialist. Vincel is the dynamo, heading the corporation and concentrating on independent truck sales. Lanz is the fleet account manager. Lanz has gained business from some of the largest fleet operators in the New York city area — Shell Oil Company, Railway Express, Union Carbide, Sinclair Oil Company and New York Central Railroad.

As we said in the beginning, that fellow Horatio was a piker compared with the folks at Long Island Reo. In three short years, they vaulted their operation into national prominence — the second largest Reo distributorship in the World. In 1960 Tom Vincel was recognized as the Reo Distributor of the Year.

By hand, they built their service shop, which can handle 12 trucks at a time; their parts storage area (all bins, racks and balconies); and their own offices. Three in the beginning, now they are 22.

Their growth has been what one might call phenomenal but the zenith hasn't been reached.

Now, they have their sights on becoming the top distributorship in the Reo Motor Truck Division.



Eleonor Goldfarb and Ann Butchman keep the office of Long Island Reo running smoothly and efficiently.

Featured with their service truck are partsmen, Chuck Michalski, Tony Naples and Nuno Tardo, parts manager.

Outstanding salesman, George V. Lanz, Tom Vincel, Henry Lanz and Nick Martino, won for Long Island Reo, the Distributor of the Year Award in 1960.

WHITE TRUCKS

A Division of

WHITE MOTOR CORPORATION

P. O. BOX 6727 • CLEVELAND, OHIO 44101

307A

August 25, 1967

H. D. WULLEN
EXECUTIVE VICE PRESIDENT
SALES

All Data Book Holders

We are very pleased to advise that we have concluded an arrangement with our Corporate Management and the Lansing Division which will make it possible for us to offer our Dealer and Branch Organization certain vehicle series which are currently manufactured in Lansing!

This new group will be designated the White 2300 Series. The addition of these trucks and tractors to our model line will completely round out our product line to the point where it is by far the most complete in the Heavy-Duty Truck Industry. The 2000 Series will be eliminated, since the new line includes all specifications previously identified with the 2000 model line. The 2300 Series will be fully identified as a White product with radiator grille and the White name in the radiator cover just as in our 4000 & 9000 Series.

You will shortly be receiving from us complete information as to specifications, weights, price, etc. Briefly, the new vehicles will be of conventional configuration and will include the following:

6 x 2
6 x 4
6 x 6
8 x 6

As to capacities: Front axles from 6,000 to 18,000; rear axles from 15,000 to 29,000 -- single drive, and from 30,000 to 44,000 in tandems. The Tri-drive 8 x 6 units will be offered with rear axle capacities of 42,000 and 46,000.

All Lansing built engines will be available plus a very wide choice of Cummins and Detroit diesel engines.

Continued ...

EXHIBIT B.

308A WHITE TRUCKS

All White Truck Holders

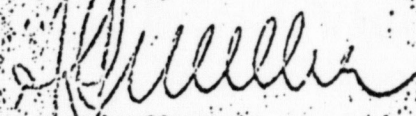
August 25, 1957

We are most enthusiastic about this new arrangement because all the vehicles offered are fully engineered and have wide acceptance, particularly in the construction field and in the light and medium duty tractor areas of the markets in which we sell our products. With the coverage our Dealers and Branches have throughout the Country, we anticipate a very substantial increase in our total sales activities.

As a corollary to this program, we have agreed to offer our Lansing Division our 1500 vehicle series. This vehicle will now be sold through Diamond-Reo as the "Diamond-Reo Compact" and we are certain that this policy will give you even wider acceptance and recognition of the high quality and acceptability of this vehicle series. White and Diamond-Reo Dealers will buy the Lansing built units and the 1500 Series at identical prices.

This whole program should be of major interest to White Dealers and Branches and we urge you to advise your customers of the additions to our product line which you will shortly be able to offer them.

Sincerely,



H. A. Weller

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
THOMAS A. VINCEL, GRACE VINCEL, :
NUNO TARDO, IRENE TARDO, WILLIAM :
BREEN, VIRGINIA BREEN, JOSEPH RUMMO, :
ROLF HOLGER, M.D. AIELLO, PAIELLO, :
AND LINCO CREDIT CORP., :

69 Civil 753

Plaintiffs, :

-against :

Affidavit in Support
of Defendants' Motion
for Summary Judgment

WHITE MOTOR CORPORATION AND GLENN :
F. KOMMER :

Defendants. :

-----x
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

STEPHEN R. STEINBERG, being duly sworn, deposes and
says:

1. I am a member of the firm of Reavis & McGrath,
attorneys for defendants, White Motor Corporation and Glenn
F. Kommer (hereinafter "White" and "Kommer" or "defendants").
I have personal knowledge of the facts set forth herein and
am fully acquainted with all prior proceedings in this action
and with the undisputed and documentary evidence recited
herein.

2. This affidavit is offered in support of defendant's
motion for summary judgment in their favor on the grounds that
(a) judgment must be granted them based on uncontested facts
as a matter of law; and (b) there are no material triable issues
of fact that preclude the granting of summary judgment.

3. Without wishing to unduly add to the papers already submitted in connection with this motion, I believe that it is incumbent upon defendants to once again emphasize the most salient fact in this case: i.e. that the Financing Agreement between White and Long Island Diamond Reo Truck Co., Inc. (hereinafter "L.I. Reo") and the Voting Trust Agreement were constructed and entered into as an alternative to the enforcement of a valid and lawful lien held by White on the major part of L.I. Reo's property, which enforcement would have effectively closed up L.I. Reo in 1966. The lien became enforceable when C.I.T. and White discovered that L.I. Reo was seriously "out of trust" with respect to trucks whose financing was guaranteed by White. This alternative to closing L.I. Reo down was created, meetings which I attended, only after L.I. Reo's president, Thomas Vincel (hereinafter "Vincel"), a plaintiff herein, literally begged White personally to give the corporation a second chance. Later when it was found that Vincel had caused L.I. Reo to continue to be "out of trust", White acted vigorously to enforce its rights. Unfortunately, before White could receive the benefit of its position, plaintiffs, as officers, directors and shareholders of L.I. Reo, placed the corporation in bankruptcy.

4. On December 27, 1962, White agreed to underwrite and guarantee L.I. Reo's financial obligations with C.I.T. Vincel says in his affidavit of April 17, 1973 that in late 1962 he had received permission from the then treasurer of White's

Reo Division, Leo DeCardy, to "float" or be "out of trust" for no more than \$100,000. However, L.I. Reo's financing arrangement was with C.I.T. and not White. That agreement provided that L.I. Reo was to pay C.I.T. the amount of the financed indebtedness immediately upon receipt of the proceeds of any sales of C.I.T.-financed trucks to retail customers. C.I.T. would verify that it was being paid for vehicles financed by it and which L.I. Reo had sold by conducting occasional surprise "car checks" on L.I. Reo's premises. At one of these surprise car checks, in November 1966, C.I.T. determined that L.I. Reo was seriously "out of trust" and was in default in its agreements. C.I.T. insisted that White honor its guarantee and at a meeting with C.I.T. at which I was present, C.I.T. made it clear that White must pay the total L.I. Reo indebtedness. White did so and became possessed of a lien on L.I. Reo's property.

5. When White moved to enforce this lien, Vincel pleaded (and that is the only word that adequately described his conduct) for more time and a second chance.

In connection with his pleas, Vincel confessed how, for numerous years, he was able to have L.I. Reo evade detection by C.I.T. of its out of trust position. This was accomplished, he explained, by taking the serial plates off the trucks and switching plates. As to the plate attached to the chassis, Vincel, either by painting or greasing it over, was able to hide the identification number. Vincel even went to the extent in his duplicity of pulling the speedometers out of the trucks in an

effort to mask their identity. Thus, L.I. Reo was able to lead C.I.T. inspectors to believe that financed trucks which had been sold had not been sold. It was not I who threatened any criminal prosecution. It was Vincel who admitted his acts. In fact, White personnel specifically stated that White was not interested in criminal proceedings because that would not recoup White's loss.

7. Vincel attempts to place me at L.I. Reo premises on the morning of November 2, 1966 (see paragraph 15 of Vincel's April 17, 1973 affidavit). The fact is, however, that I was not present and, as far as I know, the events Vincel related never took place.

8. It must also be pointed out that at no time were the Financing and Voting Trust Agreements ever presented on a take it or leave it basis. As mentioned above, Vincel had begged White not to exercise its lien. Vincel informed the White representatives at the meetings that L.I. Reo's difficulties stemmed from its inability to obtain sufficient working capital. White agreed to forbear in exercising its rights if an arrangement could be reached. At least five separate proposals were made by the parties to these negotiations relating to White's help for L.I. Reo:

- (1) White to inject capital into L.I. Reo (rejected by White);
- (2) Take over of business by White with employees receiving long-term contracts (rejected by White which did not want to be in the dealership business);
- (3) Liquidation of L.I. Reo's subsidiaries to pay off creditors (rejected by L.I. Reo as leading to bankruptcy);

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- (4) Return of trucks, parts, etc. to White in exchange for releases (rejected out of hand by Vincel);
- (5) The Voting Trust; the hiring of a business manager; the addition of an amount to current invoices to repay the "out of trust items"; notes to evidence the "out of trust" accounts.

The Financing Agreement and the Voting Trust Agreement were suggested by counsel for L.I. Reo, Eliot Lombard, Esq., and, with modifications, were accepted by White.

Both Agreements were signed on December 14, 1967, over six weeks from the alleged seizure of L.I. Reo's premises on November 2, 1966 - the commencement of the alleged coercion.

Given these facts, one court has previously decided, in an action in which L.I. Reo and defendant Vincel were parties, that there was "no merit" in the contention that L.I. Reo or Vincel were coerced into entering into the Financing and Voting Trust Agreements. The full opinion of the New York Supreme Court is included as Exhibit A hereto and must be considered to bar the issue in this case.

9. In mid-August 1967, White learned to its dismay that it had been duped. L.I. Reo, still managed by its officers and directors, plaintiffs herein (who cannot abdicate the responsibility for a business which their offices place upon them), was again seriously "out of trust." The amount was something over \$68,000. These vehicles had been financed, manufactured and shipped by White to L.I. Reo at L.I. Reo's specific order. L.I. Reo had never paid for any of them. White

filed a complaint in the Supreme Court of the State of New York and obtained an order of attachment against the L.I. Reo property for which it had a lien. These are the simple facts as to what actually happened.

10. As to the "facts" alleged in paragraph 38 of Vincel's April 17, 1973 affidavit, I find myself unable to comment. Vincel attempts throughout to make me the villain of his piece. Nevertheless, despite Vincel's ability to swear to the facts contained therein, I can state without any hesitancy that I was not present at the time in question.

In fact, Vincel is directly contradicted by Vincel. In an affidavit sworn to by him on October 20, 1967, and submitted for use in the above mentioned Supreme Court action, Vincel fails to list me as one of the persons who was present on the L.I. Reo premises on August 25, 1967.

In addition, contrary to what he implies in his most recent affidavit, Vincel was able to state under oath less than two months after the event, when his memory was certainly more accurate, that he was given an opportunity to speak extensively with his attorney and was represented and advised by him. I have taken the liberty to include a copy of this affidavit as Exhibit B hereto. In light of this, it must be wondered how accurate is Vincel's April 17, 1973 affidavit.

11. Concerning the arrest of Vincel, I knew nothing about any arrest until much later and not until after Makransky started his Supreme Court action in Makransky v. Long Island Reo Truck Co., 58 Misc. 2d 338, 295 N.Y.S.2d 240 (1968). Vincel

never discussed Tinker National Bank with me. The only discussion concerning issuance of L.I. Reo checks related to L.I. Reo's employees' wages. I had no power or authority to release any funds and the attempt, again, to put me (then an associate in a law firm) in a position of power is sheer nonsense.

12. Vincel attempts to impress the Court, in paragraph 43 of his April 17, 1973 affidavit, with the gross sales figures of L.I. Reo. But Vincel cannot hide the fact that L.I. Reo was, in reality, not a "dynamic and growing business." Vincel does not tell the Court that L.I. Reo's earnings were nonexistent and that its creditors were numerous and long-standing.

I was advised by White's accounting staff that the original books of entry of L.I. Reo showed a net loss before taxes of \$15,571 for the seven-month period ending April 30, 1967, and that the stockholders' equity in that corporation showed a deficit of \$39,994.

Vincel's cry that defendants conspired to ruin a profitable enterprise is constructed of whole cloth. All White did was protect itself from the continued practices of L.I. Reo and its officers and directors, practices which were leading to more debt and loss. L.I. Reo had been "out of trust" numerous times, and, as Vincel admits, required such practice to finance its business. An end was put to these fraudulent procedures.

13. In the New York State Supreme Court case, which had been initiated with the order of attachment of the L.I. Reo property by White, L.I. Reo interposed several counterclaims for damages in the amount of \$2,000,000. The facts alleged in the counterclaims are substantially identical with plaintiffs' allegations herein.

The first counterclaim, after setting forth the identity of the parties and discussing the acquisition by White of Reo Motors and Diamond T. Motor Truck Co., alleges how White "required" L.I. Reo and its shareholders to enter the Financing and Voting Trust Agreements, how White and Kommer, as voting trustee, "dominated and controlled" L.I. Reo; how L.I. Reo's officers and directors "devoted their talents and an extraordinary amount of time and effort" to L.I. Reo's affairs in reliance upon the agreements with White; and how White and Kommer "with the intent and purpose of avoiding its [sic] contractual obligations to L.I. Reo and of destroying the business of L.I. Reo" proceeded to accomplish their purpose by claiming that acts of Antelis "constituted breaches by L.I. Reo of its agreements" with White and by attaching the L.I. Reo property subject to the lien. Compare this with the "first cause of action" contained in plaintiffs' proposed amended complaint. After identifying the parties and discussing the acquisition by White of Reo Motors and Diamond T. Motor Truck Co., the first cause of action alleges that "White Motor required L.I. Reo and plaintiffs [stockholders of L.I. Reo]...to enter into a Financing Agreement" and submit their shares to a voting trust; that White and Kommer "with the intent and purpose...to evade [their] contractual and fiduciary obligations...to destroy the business of L.I. Reo, and to cause injury to plaintiffs" claimed that their acts and that of Antelis "constituted breaches by L.I. Reo of its agreements with White Motor" and by using the breaches as a pretext proceeding to seize the

trucks and parts owned and possessed by L.I. Reo; and that "in reliance upon said franchise and contractual and trust arrangements" plaintiffs, as officers and employees of L.I. Reo "devoted their talents and an extraordinary amount of time and effort" in operating L.I. Reo. The parallel is striking between the first counterclaim and the first cause of action because the claim for relief and the facts on which it is founded are identical.

In a second counterclaim in the Supreme Court case L.I. Reo alleged that White and Kommer breached their fiduciary duty to L.I. Reo and its creditors and stockholders and "acted in their own selfish interests." Likewise, in the "second cause of action" of their proposed amended complaint plaintiffs allege that "White Motor and Kommer breached their said fiduciary obligations; acted in their own selfish interests and in bad faith against the interests of L.I. Reo and the plaintiffs."

Furthermore, a third counterclaim alleged that White and Kommer "acted in bad faith in the performance of the franchise held by L.I. Reo...and also in cancelling the franchise." The parallel in the proposed amended complaint appears in the fifth and sixth "causes of action" which allege, respectively, that "defendant failed to act in a fair and equitable manner too and L.I. Reo and the plaintiffs...and cancelled the aforementioned franchise...in violation of the Automobile Dealers' Franchise Act, 15 U.S.C. Secs. 1221-1225.", and that "defendants terminated the dealer franchise...and terminated defendants' other agreements with L.I. Reo and its shareholders without cause...in violation of Sec. 197 of the General Business Law of the State of New York,

"which under both statutes means that defendants did not act "in good faith" (15 U.S.C. §1222; N.Y. Gen. Bus. Law §197 et. seq.)

The fourth counterclaim attempted to allege a conspiracy between White and Kommer to violate the antitrust laws by combining White's major truck divisions with the purpose of "lessening competition" and to "drive out of business the largest dealers, including L.I. Reo, selling only Diamond or Reo trucks..." This is paralleled by the "fourth cause of action" in the proposed amended complaint which alleges a conspiracy, in which White and Kommer participated, to "combine White Motor's major truck divisions and to drive out of business the largest dealers, including L.I. Reo, selling only Diamond T. or Reo or Diamond Reo trucks..." Plaintiffs' nearly identical claim contained in the original complaint in this action was dismissed by this Court in August 1972.

The answer and counterclaim submitted by L.I. Reo and Vincel in the New York Supreme Court action are included as Exhibit C hereto.

Almost four months later, after the opinion by Mr. Justice Frank (see Exhibit A), plaintiffs placed L.I. Reo in bankruptcy. Subsequent thereto, White asserted its claim in the bankruptcy court and L.I. Reo asserted a counterclaim, similar to the ones asserted in the Supreme Court action, in the amount of \$3,000,000 (see Exhibit D). In the bankruptcy proceedings a compromise was arranged and approved by the referee in bankruptcy whereby L.I. Reo released its counterclaims against White and Kommer and agreed to discontinue with prejudice counterclaims against White and Kommer in the Supreme Court case. White was to receive

personal property (except \$17,000 cash) held, pursuant to the attachment, by the Sheriff of the City of New York. L.I. Reo agreed to supply or execute the necessary documents so that White could sell or liquidate the trucks repossessed and replevied by it on August 25, 1967. White also had the attachment bond cancelled and all liability thereunder extinguished. L.I. Reo assigned to White its interest in a reserve account of about \$26,000 held by C.I.T. in L.I. Reo's name. L.I. Reo received \$100,000 from White and \$17,000 held by the Sheriff pursuant to the attachment. White's action in the Supreme Court against L.I. Reo was to be discontinued with prejudice. (See Exhibit E.) In general, the compromise provided for give and take on all sides.

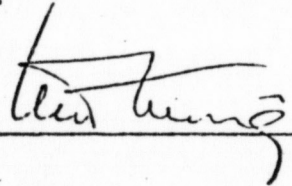
L.I. Reo's trustee was substituted in the Supreme Court action for L.I. Reo (Exhibits F and G) and a stipulation of discontinuance with prejudice was entered. (See Exhibit H.) The causes of action of Vincel by and against White and Kommer were dismissed without prejudice. It is hence manifest that unless plaintiffs can present claims separate and apart from those of L.I. Reo, this action must also be dismissed.

14. From the foregoing, it is clear that it was not White that forced L.I. Reo or any of the plaintiffs to do anything. Rather the arrangements of November 1966, which saved L.I. Reo from immediate insolvency, were entered into at the request of Vincel, as president of L.I. Reo. At that time,

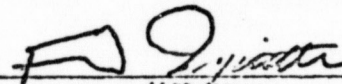
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Vincent importuned White to forebear from executing on its valid lien and allow L.I. Reo, an already stumbling business, a second chance at life. White fell for his pleas and has suffered ever since. .

WHEREFORE, the moving defendants pray that summary judgment be granted against plaintiffs.



Sworn to before me this
7th day of May, 1973.



FRED A. SOUTH
NOTARY PUBLIC, STATE OF NEW YORK
No. 7014200
Qualified in Kings County
Commission Expires March 30, 1974

SUPREME COURT : NEW YORK COUNTY

SPECIAL TERM : PART I

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-----x
WHITE MOTOR CORPORATION,

Plaintiff,

Index No. 14135/67

-against-

LONG ISLAND DIAMOND-REO TRUCK CO., INC.,
a/k/a LONG ISLAND REO TRUCK CO., INC.,

Defendant.
-----x

FRANK, J.:

Motions 33, 167 and 179 are consolidated and determined herein. These three motions and cross motions relate to an order of attachment that plaintiff has obtained to secure itself in this action against the defendant.

The plaintiff is a manufacturer of trucks and related equipment who for the past year has been the mainstay, supplier and financier of the defendant who sold trucks, equipment and parts under a franchise with plaintiff. In November 1966, after a major default by defendant with Universal CIT Credit Corporation, who had been financing defendant's purchases, the plaintiff pursuant to an agreement executed in December 1962, purchased defendant's outstanding obligations from CIT. Shortly thereafter on November 23, 1966, agreements were entered into between the parties under which plaintiff secured itself by providing that all of the trucks and parts then in the defendant's possession, or to be acquired, were billed subject to immediate repossession by the plaintiff upon defendant's default of its obligation, and further making provision that trucks thereafter to be delivered could not be sold unless payment of the principal was simultaneously made directly to the plaintiff or by check made payable to

1
Exhibit A

defendant and endorsed to White. In February 1967 the defendant defaulted to the extent of \$42,739.56 but was permitted to execute another note providing for adequate security on the parts supplied to and sold by defendant, payment of which was guaranteed personally by the named individual defendant Vincel.

As of August 25, 1967 it appears that defendant had defaulted to the extent of failing to transmit a total of \$125,877.70 to the plaintiff at which time the plaintiff seized and replevied certain trucks set forth in the schedule appended to the moving papers, and instituted its present action against the defendant. On September 1, 1967 the plaintiff moved for and obtained an order of attachment and attached the parts in possession of the defendant.

Defendant seeks to vacate this order of attachment and raises technical legal arguments without referring to the aforementioned agreements beyond the bare assertion that it was pressured into them. The court finds no merit in such contention nor in the argument that the action is one for replevin only and that attachment does not lie. The complaint sufficiently spells out a cause of action for conversion. Nor does plaintiff's failure, in its application for the order of attachment, to inform the court of its prior seizure under section 7201 of the CPLR constitute a defect so serious as to warrant a vacatur of the order. As to the disputed aggregate value of the parts seized and the amounts in its bank account, defendant fails to make any factual showing to support its asserted figure. On the other hand plaintiff has offered factual and convincing proof of a cause of action for a conversion and defendant's repeated default in honoring the obligations under the agreements and notes between the parties, thus justifying the plaintiff in seeking to secure itself by the attachment and repossession of property in the hands of defendant. It is clear from the copies of the agreements submitted in these papers that plaintiff is entitled to

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immediate possession of the same.

The present action is for more than \$500,000 and the total value of the chattels seized, replevied and attached is under \$300,000.

Accordingly, defendant's motion is denied, and plaintiff's cross motion to release certain chattels and its motion for an additional order of attachment and for disclosure under CPLR 6220 are granted.

Settle order providing for the posting of respective bonds as consented to by plaintiff.

Dated: December 11th, 1967.

J.S.C.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WHITE MOTOR CORPORATION,

Plaintiff,

- against -

Index No.
14135/1967

LONG ISLAND DIAMOND-RED TRUCK CO., INC.,
2/17/68 LONG ISLAND RED TRUCK CO., INC.,

Defendant.

DEFENDANT'S REPLY AFFIDAVIT ON MOTION FOR RETURN
OF CARS ILLEGALLY SEIZED

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

THOMAS A. VINCEL, being duly sworn, deposes and
says:

1. I am president of defendant LONG ISLAND DIAMOND
RED TRUCK CO., INC. This affidavit is submitted in reply
to the answering affidavits of STEPHEN R. STEINBERG, Esq.
(October 17, 1967), GLENN F. KOETTER (October 18, 1967), and
RICHARD J. CUNNINGHAM, Esq. (October 19, 1967).

2. The statements in the answering affidavits
that defendant voluntarily surrendered the trucks, rather
than yielded the trucks to the Sheriff pursuant to judicial
process, are completely false. The following is what
occurred:

(a) When I returned from lunch on August 25,
1967 I found at defendant's premises at Woodside, New York,
a Deputy Sheriff, Mr. GLENN F. KOETTER, Mr. GARTH O. COLLINS

Exhibit B

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and Mr. RICHARD J. CUNNINGHAM. Mr. Kerner is treasurer of the plaintiff's Bond and Reo Truck Division; Mr. Collins is local manager for plaintiff; and Mr. Cunningham is associate with Townsend & Lewis, Inc., attorneys for plaintiff. The Deputy Sheriff arrived with papers, including (a) a citation, (b) a schedule of assets to be seized, and (c) a bond written by Fearless Insurance Company for \$700,000.00. The Deputy Sheriff showed me his badge and stated that he had come to seize all of the trucks listed in the schedule and any other trucks on the defendant's premises. He said that he was acting under order of the Court and asked whether or not I would cooperate with him. When I endeavored to protest that the plaintiff was not entitled to the vehicles, the Deputy Sheriff stated that I had no choice but that I was protested because the plaintiff had put up a bond for over \$700,000.

(b) I approached Mr. Kerner and said that I wanted to discuss the matter with him and find out why plaintiff was taking this action. Mr. Kerner refused to discuss the subject and stated that the Deputy Sheriff was in charge.

(c) I then asked the Deputy Sheriff whether I could talk to our attorneys. I telephoned Townsend & Lewis, Inc., and found that the partner with whom I wished to discuss the matter was out-of-town. I requested that the firm get in touch with him and have him call me. The partner did call me and asked me to describe the nature of the papers that had been served upon me. I told our attorney that the Sheriff was going to take not only the trucks, but also our bank books, mail and other property. Our attorney requested

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that Mr. Kemmer be put on the phone so that he could discuss the scope of the seizure with him. Instead, Mr. Cunningham talked to our attorney. When the conversation with Mr. Cunningham was completed, I again got on the phone with our attorney and he stated that the Sheriff would take only the trucks and no other items.

(d) I then told the Deputy Sheriff that my attorney agreed that I had to comply with the process. A number of drivers were called in and they started to take the trucks away. The seizure continued for the next few days both at Woodside and at defendant's premises at Hauppague.

3. Copies of the requisition, the schedule of chattels, and the bond for \$702,898.54 are being furnished to the Court. Among the trucks seized were some not listed in the schedule; also, three trucks located at body shops with which we were doing business were also seized. Altogether, 42 trucks were seized and taken away.

4. It is ludicrous to contend that defendant voluntarily surrendered the trucks. If plaintiff itself had attempted to remove trucks belonging to us, defendant would have strongly resisted because it vigorously denies the existence of any default. The Deputy Sheriff was permitted to take the trucks because I had been advised by him and also by our attorney that we were obligated to comply with the mandates of the Court.

5. It will be noted that Mr. Cunningham, in an effort to sustain the version that defendant voluntarily surrendered the trucks, has to declare that plaintiff's

6. Obviously plaintiff's current version is advanced because of their fear that the Court may require return of the seized chattels. It is a transparent effort to escape from the liability, covered by plaintiff's undertaking, for damages with respect to vehicles improperly seized.

7. Mr. Kennen makes reference to the fact that I have been charged with criminal fraud in connection with the sale of a truck. This below-the-belt blow is another indication of the extremes to which Plaintiff and Mr. Kennen are willing to go to prejudice defendant. Mr. Kennen does not advise the Court that the monies received from the sale of the truck were turned over to their agent, Mr. SAMUEL ANTELIS, and that it is plaintiff's auto which brought about the charge. I am confident that the charge will be dismissed. When it is, I shall bring appropriate action against plaintiff and Mr. Kennen for the damages to me resulting from this improper accusation.

8. I am advised by our attorneys that the issue on this motion is a simple one. The question is whether this is an action in replevin, so that the trucks could be lawfully seized under bond, or is it an action in conversion which would not permit such a seizure. Everything else the plaintiff seeks to inject on this motion is camouflage.

Signed to be true as stated
29th day of October 1967

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WHITE MOTOR CORPORATION,

Plaintiff

- against -

LONG ISLAND DIAMOND-REO TRUCK CO., INC.,
a/k/a LONG ISLAND REO TRUCK CO., INC. and
THOMAS A. VINCEL,

Index No. 14135/
1967

Defendants

GLENN F. KORMER,

Additional Defendant on
Counterclaim

ANSWER AND COUNTERCLAIMS

Defendants, for their answer to the amended
complaint and their counterclaims, allege:

1. Defendants deny each and every allegation
contained in paragraphs 8, 12(b), 14, 15, 16, 18, 21 and 25
of the amended complaint.

2. Defendants deny knowledge or information
sufficient to form a belief as to the truth of the
allegations contained in paragraphs 1, 4 and 12(a) of the
amended complaint.

3. Admit that defendant LONG ISLAND DIAMOND REO
TRUCK CO., INC. ("L.I. Reo") is a New York corporation, and
that its name was formerly Long Island Reo Truck Co., Inc.,
and otherwise deny each and every allegation contained in
paragraph 2 of the amended complaint.

E+h.b.+ C

4. Admit that Thomas A. Vincel was and is president and a stockholder of L. I. Reo; and otherwise deny each and every allegation contained in paragraph 2 of the amended complaint.

5. Admit that L. I. Reo entered into the following agreements mentioned in the amended complaint:

- (a) Agreement dated August 28, 1964 with Universal C.I.T. Credit Corporation (Exhibit A);
- (b) Agreement dated November 23, 1966 with plaintiff (Exhibit E);
- (c) Security Agreement dated February 21, 1967 (Exhibit G); and
- (d) Consignment Agreement dated February 21, 1967 (Exhibit H),

and refer to said agreements for their true terms and conditions; and, except to the extent admitted, deny each and every allegation contained in paragraphs 5, 10 and 11 of the amended complaint.

6. Admit that L. I. Reo from time to time executed and delivered chattel mortgages and trust receipts in the forms annexed as Exhibits C and D to the original complaint; and, except to the extent admitted, deny each and every allegation contained in paragraphs 6 and 7 of the amended complaint.

7. Admit that L. I. Reo made the promissory notes annexed as Exhibits F and I to the original complaint, and refer to the said notes for their true terms and conditions; and, except to the extent admitted, deny each and every allegation contained in paragraphs 10 and 13 of the amended complaint.

allegation contained in paragraphs 10 and 13 of the amended complaint.

8. Admit that L. I. Reo made a promissory note to plaintiff on or about August 23, 1963; allege that the method of paying the note was provided in the Agreement dated November 23, 1966; and, except to the extent admitted, deny each and every allegation contained in paragraph 20 of the amended complaint.

9. Defendant Thomas A. Vincel admits that he signed the promissory notes referred to in paragraph 7 of this answer and otherwise denies each and every allegation contained in paragraphs 23 and 24 of the amended answer.

FIRST DEFENSE AND COUNTERCLAIM

10. L. I. Reo is a corporation organized under the laws of New York and for many years was engaged in the business of selling trucks and truck parts and servicing customers' trucks. Defendant Thomas A. Vincel is president, a director and a stockholder of L. I. Reo.

11. Upon information and belief:

(a) Plaintiff was and is a corporation organized under the laws of Ohio and was and is engaged in the manufacture of trucks which it sold and sells throughout the United States and in foreign countries.

(b) Plaintiff's principal plant is located in Cleveland, Ohio.

(c) In or about June 1957, plaintiff acquired substantially all of the assets of Reo Motors, Inc., a

manufacturer of trucks whose principal plant was located at Lansing, Michigan.

(d) In or about April 1953, plaintiff acquired the inventories and other assets of Diamond T Motor Car Co., a manufacturer of trucks.

(e) Thereafter, plaintiff operated three principal truck divisions, as follows: White Truck Division at Cleveland, Ohio; Ree Motor Truck Division at Lansing, Michigan; and Diamond Motor Truck Division at Lansing, Michigan, all engaged in the manufacture of trucks for sale in the United States and foreign countries.

(f) During the Spring of 1967, plaintiff combined the Ree Motor Truck and Diamond Motor Truck Divisions into the Diamond Ree Division which it continues to operate at Lansing, Michigan.

(g) The additional defendant, Glenn F. Kormer, was and is an official of plaintiff and is presently treasurer of its Diamond Ree Division.

12. L. I. Ree, and its predecessor partnership, were dealers in Ree trucks and parts under successive franchise agreements entered into with plaintiff. When plaintiff's Ree Motor Truck and Diamond Motor Truck divisions were combined, L. I. Ree became a dealer in Diamond Ree trucks under franchise from plaintiff.

13. On or about November 23, 1966, plaintiff required L. I. Ree to enter into a financing agreement, copy of which is annexed as Exhibit E to plaintiff's original complaint.

14. The Agreement of November 23, 1966 required the stockholders of L. I. Reo, including defendant Thomas A. Vincel, and of affiliated corporations, to deposit their shares in a Voting Trust of which the Trustee would be a person designated by plaintiff. Plaintiff designated Glenn F. Kommer, the additional defendant, to be the Trustee.

15. Plaintiff required the stockholders of L. I. Reo and its affiliated corporations to enter into a Voting Trust Agreement with Glenn F. Kommer dated December 29, 1966 and said stockholders, including defendant Thomas A. Vincel, deposited their shares in L. I. Reo and the affiliated corporations with Glenn F. Kommer as Trustee.

16. The Voting Trust Agreement of December 29, 1966 contained the following provision for the appointment of a General Manager for L. I. Reo by the Trustee:

"It is understood and agreed that the Trustee may cause L. I. Reo's Board of Directors to appoint a person acceptable to him to act as L. I. Reo's General Manager, whose salary shall be paid by the Trustee."

17. Thereafter, Glenn F. Kommer selected Samuel Antelis ("Antelis") to be General Manager of L. I. Reo and requested the directors of L. I. Reo to appoint him as General Manager. The Board of Directors of L. I. Reo thereupon adopted a resolution providing in part:

"RESOLVED that Mr. Samuel Antelis of 172-20 133rd Avenue, Jamaica, New York, be and he hereby is appointed General Manager of this Corporation, to serve at the pleasure of G. F. Kommer, Voting Trustee."

18. Until on or about the commencement of this action Antelis served as General Manager of L. I. Reo at the pleasure of plaintiff and Glenn F. Kemmer and under their direction and supervision.

19. By reason of the foregoing, plaintiff and Glenn F. Kemmer dominated and controlled the financial affairs of L. I. Reo.

20. Thereafter, all monies realized from the sale of trucks and truck parts, and all other income realized by L. I. Reo, were turned over by L. I. Reo's officers and employees to the control of Antelis and the application of said monies was in the exclusive control of Antelis.

21. Prior to the commencement of this action, L. I. Reo was one of the largest dealers in Diamond Reo trucks and had made sales of approximately \$12,000,000 under the franchises from plaintiff. L. I. Reo's sales aggregated \$2,710,131 during the fiscal year ending September 30, 1965, \$2,961,625 during the fiscal year ended September 30, 1966, and were approaching a record during fiscal 1967. L. I. Reo's operations were profitable and its prospects excellent.

22. In reliance upon its franchises from plaintiff and its contractual arrangements with plaintiff, L. I. Reo and its affiliated corporations made substantial capital investments for the purpose of increasing its sales volume and potential and L. I. Reo's officers devoted their talents and an extraordinary amount of time and effort to the building of a valuable distributorship of plaintiff's trucks.

23. Plaintiff and Glenn F. Kommer, with the intent and purpose of avoiding its contractual obligations to L. I. Reo and of destroying the business of L. I. Reo, determined to, and did thereafter, claim that acts of their agent, Antolis, constituted breaches by L. I. Reo of its agreements with plaintiff.

24. Plaintiff and Glenn F. Kommer thereupon improperly caused Sheriffs of the State of New York to seize and turn over to plaintiff all new and used trucks located at L. I. Reo's places of business and to attach L. I. Reo's inventory of parts and monies in its bank accounts.

25. Subsequent to the commencement of this action, plaintiff improperly and without adequate cause, cancelled the franchise held by L. I. Reo.

26. The improper and unlawful acts of plaintiff and Glenn F. Kommer have caused substantial damage to L. I. Reo, its other creditors and its stockholders, including defendant Thomas A. Vincel. L. I. Reo has been forced to close its doors and discontinue its business of selling trucks and parts and of servicing vehicles. L. I. Reo is unable to fill orders on hand for new trucks and to continue negotiations looking toward the sale of trucks. Its capital investments have been seriously damaged. L. I. Reo's good will has been destroyed.

27. By reason of the foregoing, defendants have suffered damages of \$2,000,000.

SECOND DEFENSE AND COUNTERCLAIM

28. Defendants repeat and reallege each and every allegation contained in paragraphs 10 through 26 of this answer as though fully set forth herein.

29. By reason of the facts recited herein, plaintiff and Glenn F. Kommer assumed fiduciary obligations to L. I. Reo, its other creditors, its stockholders and its affiliated corporations to act in the best interests of L. I. Reo in the control and management of its financial affairs.

30. By acting in the manner herein alleged, plaintiff and Glenn F. Kommer breached their fiduciary obligations and acted in their own selfish interests and to the detriment and prejudice of defendants, among others.

31. By reason of the foregoing, defendants have suffered damages of \$2,000,000.

THIRD DEFENSE AND COUNTERCLAIM

32. Defendants repeat and reallege each and every allegation contained in paragraphs 10 through 26 of this answer as though fully set forth herein.

33. By acting in the manner herein alleged, plaintiff, with the assistance and participation of Glenn F. Kommer, acted in bad faith in the performance of the franchise held by L. I. Reo and other contractual arrangements with plaintiff, and also in cancelling the franchise.

34. By reason of the foregoing, defendants have suffered damages of \$2,000,000.

FOURTH DEFENSE AND COUNTERCLAIM

35. Defendants repeat and reallege each and every allegation contained in paragraphs 10 through 26 of this answer as though fully set forth herein.

36. Upon information and belief, the plaintiff, its officials including Glenn H. Kommer, its White Motor Truck Division, its Reo Motor Truck Division and its Diamond Motor Truck Division entered into a conspiracy to combine plaintiff's major truck divisions, for the purpose of lessening competition and otherwise benefiting plaintiff, and to drive out of business the largest dealers, including L. I. Reo, selling only Diamond or Reo trucks so as to circumvent plaintiff's contractual obligations and franchise commitments to them.

37. Upon information and belief, pursuant to said conspiracy -

(a) The plaintiff's Reo Motor Truck Division and its Diamond Motor Truck Division have been combined and the separate manufacture of Diamond trucks and Reo trucks has been discontinued;

(b) Plaintiff and its co-conspirators have commenced to offer the sale of trucks and parts manufactured at the Diamond Reo Division at Lansing, Michigan under the White label to dealers under franchise from plaintiff's White Truck Division;

(c) Plaintiff and Glenn H. Kommer acquired complete control of the financial affairs of L. I. Reo; and

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(d) Plaintiff and Glenn H. Kerner engaged in the acts and conduct heretofore alleged herein.

38. By reason of the foregoing, defendants have been damaged in the sum of \$2,000,000.

FIFTH DEFENSE ON BEHALF OF DEFENDANT VINCEL

39. The original summons and complaint in this action named L. I. Reo as the sole defendant. The summons and complaint were served upon L. I. Reo.

40. Thereafter, without applying to or obtaining the authorization of this Court to add a new defendant and to issue a supplemental summons, plaintiff caused the issuance of a new summons naming Thomas A. Vincel as a defendant in this action.

41. Defendant Thomas A. Vincel admits service upon him of the unauthorized summons and amended complaint.

42. By reason of the foregoing, the Court has not acquired jurisdiction over the person of defendant Thomas A. Vincel.

WHEREFORE, defendants demand judgment dismissing the complaint and awarding to defendants damages in the sum of \$2,000,000 against plaintiff and the additional defendant on the counterclaims, together with the costs and disbursements of the action.

REMBAR & ZOLOTAR
Attorneys for Defendants
Office and P. O. Address
521 Fifth Avenue
New York, N. Y. 10017
OXford 7-1787

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STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

THOMAS A. VINCEL, being duly sworn, deposes and says:

He is president of Long Island Diamond Reo Truck Co., Inc., one of the defendants in this action, a domestic corporation, and he is also a defendant in this action; that he has read the foregoing Answer and Counterclaims and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

THOMAS A. VINCEL

THOMAS A. VINCEL

Sworn to before me this
16th day of October 1967.

Notary Public
IRVING KLEIN
Notary Public, State of New York
No. 24-2140373
Qualified in Kings County
Commission Expires March 30, 1969

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter

of

LONG ISLAND DIAMOND REO TRUCK CORP.,
formerly known as LONG ISLAND REO
TRUCK CO., INC.,

No. 67 B 1451

ANSWER AND OBJECTION
TO CLAIM

Bankrupt.

The answer of MITCHELL H. KAY, the trustee herein, by
LOUIS P. ROSENBERG, his attorney, to the application of WHITE
MOTOR CORPORATION to vacate the restraining provisions of the
order dated December 21, 1967, and the objection to the proof of
claim filed herein by WHITE MOTOR CORPORATION, in the sum of
\$321,610.14, respectfully alleges:

1. Admits that LONG ISLAND DIAMOND REO TRUCK CORP.
(bankrupt) entered into agreements with WHITE MOTOR CORPORATION
(claimant) dated November 23, 1966; security agreement dated
February 21, 1967; and consignment agreement dated February 21,
1967, and from time to time delivered chattel mortgages, trust
receipts and promissory notes to the claimant.

2. Denies that the bankrupt is indebted to the claimant
in any amount but, on the contrary, because of the acts and conduct
of the claimant in violation of its obligation to the bankrupt,
resorted to certain practices calculated to and resulting in

Exhibit D

destruction of the bankrupt's operations and business and damages in the sum of \$3,000,000.00.

DEFENSE AND COUNTERCLAIM

3. Claimant is engaged in the manufacture of trucks which it sells throughout the entire United States and in foreign countries and, in about June of 1957, acquired the assets of Reo Motors Inc., also a manufacturer of trucks, and in about April of 1968, acquired the inventory and assets of Diamond T Motor Car Co., also a manufacturer of trucks.

4. The bankrupt was a dealer in Reo trucks and parts under a franchise agreement with claimant, which franchise was subsequently extended so as to include Diamond motor trucks and parts.

5. The bankrupt entered into a financing agreement with claimant on or about November 23, 1966 and in connection therewith the bankrupt's stockholders were required to enter into a Voting Trust Agreement with Glenn F. Kommer, an officer of the claimant, whereby the stock was deposited with said trustee and which Voting Trust Agreement also vested with said trustee the right to have the bankrupt employ a general manager acceptable to said trustee.

6. Thereafter said trustee requested the bankrupt to

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appoint Samuel Antelis to be general manager, who was acting under the direction and supervision of the claimant through its agents and representatives, and the claimant, through said Voting Trustee and the general manager dominated and controlled the financial affairs of the bankrupt.

7. That the financial affairs of the bankrupt, such as the receipt and collection of moneys and disbursements thereof was in the exclusive control of the general manager, claimant's designee, and the bankrupt, through its officers and stockholders, relied upon claimant's agents to conduct the financial affairs of the bankrupt in good faith and in its best interests.

8. That the claimant, through its agents, did not act in good faith and in the bankrupt's best interest but so conducted the financial affairs of the bankrupt so as to create technical or theoretical breaches so as to use those breaches as a basis for declaring a default and a premature termination of the agreements between the parties.

9. That claimant, through its agents and representative and with the intent and purpose to avoid its contractual and franchise obligations to the bankrupt and to destroy the bankrupt business, did claim that its own acts and those of its agents, constituted breaches and defaults under its agreements with the

bankrupt and demanded full payment of moneys allegedly owing and also demanded possession of all trucks and parts owned and possessed by the bankrupt and claimant took steps to enforce said unwarranted demands, which resulted in the bankrupt being compelled to cease operations.

10. That claimant wilfully and unjustly instituted proceedings in the Supreme Court, New York County, and unilaterally obtained therefrom writs authorizing the Sheriff to seize and attach the bankrupt's property, thereby destroying the bankrupt's business, depriving it of the ability to continue operations, and making necessary resort to bankruptcy proceedings.

11. By reason of all of the foregoing the bankrupt is entitled to the return of all of the property that was seized by the Sheriff and damages in the sum of \$3,000,000.00.

WHEREFORE, it is prayed that the application to vacate the stay be, in all respects, denied; that the proof of claim filed herein by the claimant in the sum of \$321,610.14 be disallowed; and that judgment be entered on the counterclaim in favor of the trustee and the bankrupt estate; decreeing and adjudging that the assets seized by the Sheriff be returned to the bankrupt estate, and that the claimant be required to pay damages for its unlawful conduct and destruction of the bankrupt's business in the sum of \$3,000,000.00.

Dated: March 29, 1968.

Louis P. Rosenberg
Attorney for Trustee
16 Court Street,
Brooklyn, N.Y. 11201

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Filed Aug 22, 1968

Special Referee
Referred to Bankruptcy

In the Matter of

LONG ISLAND BEACHED TRUST CORP.,
formerly known as LONG ISLAND BEACH
TRUST CO., INC.,

CERTIFICATE APPROVING
COMPROMISE

Bankrupt.

6783451

An application having been presented to the Referee by the Trustee for authority to compromise the claim of the bankrupt against WHITE HYPER CORPORATION ("White") and Glenn F. Kanner and White's claim filed in this proceeding pursuant to a written Offer of Settlement dated July 19, 1968 addressed to the attorney for the Trustee and transmitted to the Referee; and

A notice of the proposed compromise and the hearing thereon having been mailed by the Referee to all creditors listed on the petition filed by the bankrupt; and

A hearing having been had by the Referee on August 15, 1968 at which time there appeared Louis P. Rosenberg, Esq., attorney for the Trustee, Michael H. Kay, Trustee and attorney for a creditor, and Stephen R. Steinberg, Esq., attorney for White, all in favor of the proposed compromise; and Messrs. Rabin & Zolotar (Myron S. Isaacs, Esq., of counsel), attorney for the bankrupt, Messrs. Townsend & Lewis (by Eliot Lumbard, Esq., of counsel), a creditor, in opposition to the settlement; and

After hearing argument by all appearing and due deliberation having been had thereon, and the Referee having determined that the offer is fair and equitable to the bankrupt and its creditors;

Now, on motion of Louis P. Rosenberg, Esq., attorney for the Trustee, it is hereby

EXHIBIT E

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ORDERED, that the Trustee is hereby authorized and directed to compromise the bankrupt's claim against White and Glenn F. Hammer and White's claim against the bankrupt on the following terms and conditions:

1. The Trustee shall receive from White a certified check in the amount of \$100,000.00.

2. White shall withdraw its claim in this proceeding in the amount of \$327,610.14 plus interest by filing in this Court a notice of withdrawal.

3. The Trustee shall discontinue with prejudice his counterclaim filed herein in the amount of \$3,000,000.00.

4. The Trustee and White, or their attorneys, shall execute and file a stipulation of discontinuance, with prejudice, but without costs to either party, of an action now pending in the SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK, Index No. 14135/67, captioned: "WHITE MOTOR CORPORATION against LONG ISLAND DIAMOND ROSS TRUNK CO., INC., et al., Defendants and GLENN F. HAMMER, Defendant on Counterclaim," ("Supreme Court action"). However, said stipulation shall not in any way affect the action of White Motor Corporation against Thomas A. Vincel and Thomas A. Vincel's defenses and counterclaims to said action.

5. White Motor Corporation and the Trustee or their attorneys are directed to do all things necessary to cause:

(a) The Sheriff of the City of New York, County of New York, to release to the Trustee, upon payment by the Trustee of said Sheriff's costs, fees and expenses of a sum of money in the approximate amount of \$17,000.00 held by said Sheriff pursuant to an Order of Attachment entered in the Supreme Court action on September 1, 1967, and the Trustee shall pay to the Sheriff his costs, fees and expenses calculated on the total originally attached by the Sheriff.

(b) The Sheriff of the City of New York, Queens County, and the Sheriff of Suffolk County to release to White, upon payment by White of said Sheriff's costs, fees, expenses, and storage charges, certain personal property held by said Sheriff pursuant to an Order of Attachment entered on September 1, 1937 in the Supreme Court action;

(c) The Attachment Bond and the Replevy Bond provided to the Sheriff of the City of New York and the Attachment Bond provided to the Sheriff of Suffolk County in the aforesaid action to be cancelled and all liability thereunder extinguished.

6. White shall deliver to the Trustee a covenant not to sue the Trustee or the bankrupt in connection with any matter or any claim asserted in the Supreme Court action or in this proceeding, reserving therein White's rights against Thomas A. Vincol in the Supreme Court action.

7. The Trustee shall deliver to White, its officers, directors and employees and Glenn F. Kerner and their heirs, administrators, executors and assigns, a General Release releasing said corporation and persons from all matters and claims of any nature whatsoever which the Trustee or the bankrupt have.

8. The Trustee shall deliver to White a Bill of Sale, the consideration for which shall be the compromise provided for herein, of all personal property released to White by the Sheriff of the City of New York and the Sheriff of Suffolk County.

9. The Trustee shall deliver to White an assignment and release of all the interest of the Trustee and the bankrupt in and to a reserve account in the approximate amount of \$26,000 now held by Universal C.I.T. Credit Corporation in the name of the bankrupt.

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10. The Trustee shall deliver to White such documents as are requested by White so that White can sell or dispose in any state all of the motor vehicles repossessed and replevied by White on or about August 23, 1957; and

IT IS FURTHER ORDERED, that in the event all of the stockholders of the Trustee shall by September 15, 1958, deliver to the attorney for White, their individual General releases in favor of White, its directors, officers and employees and Glenn F. Kerner, and said persons and corporation's heirs, executors, administrators and assigns releasing them from any and all claims which said stockholders now have or may have against said persons and corporations, then White shall, within 15 days thereafter cause to be delivered to the attorney for the Trustee, on behalf of said stockholders, its equivalent General release in favor of said stockholders. However, if said releases are not delivered as herein provided, such shall not affect all of the other terms and conditions of this Order and this Order shall remain and be in full force and effect, and

IT IS FURTHER ORDERED, that paragraph 1 of the Order entered herein on December 21, 1957 by Judge Jacob Michler staying the Supreme Court action be and it is hereby dissolved, and

IT IS FURTHER ORDERED, that the Referee shall retain jurisdiction in connection with the within Compromise for the purpose of adjudicating any dispute which may arise in connection with any portion of this Order or the execution thereof.

S/ Sherman D. [Signature]
Referee in Bankruptcy

Dated: Jamaica, New York
August 27, 1958

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter of

LONG ISLAND DIAMOND REO TRUCK CORP.,
formerly known as LONG ISLAND REO
TRUCK CO., INC.,

ORDER

Bankrupt.

WHEREAS, a compromise of the claims of White Motor Corporation against the bankrupt and the bankrupt's claims against White Motor Corporation and Glenn F. Kommer, has, after hearing held on August 15, 1968, been approved by the Referee and on ^{August 27, 1968,} Order approving compromise entered ~~this date~~, it is hereby

ORDERED, that pursuant to 11 U.S.C.A. 29 (b) and (c), the Trustee, Mitchell N. Kay, be and he hereby is directed to enter his appearance in an action entitled "White Motor Corporation against Long Island Diamond Reo Truck Co. Inc., et al.", Supreme Court of the State of New York, County of New York, Index No. 14135/1967 and make or join in whatever application is necessary in order that he may be substituted as defendant and counterclaimant in said action for the purpose of causing said action and counterclaim to be dismissed with prejudice, in accordance with the Order Approving Compromise entered this date.

Dated: Jamaica, New York
August 28, 1968

S. ~~THOMAS D. CHAMBER~~
Referee in Bankruptcy

CONSENTED TO:

Louis P. Rosenberg

Louis P. Rosenberg, Atty. for Trustee

REAVIS & McGRATH

Attorneys for White Motor Corporation

by William S. Rosenberg

EXHIBIT F

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WHITE HOTEL CORPORATION,

Plaintiff,

-against-

LONG ISLAND DIAMOND AND TRUCK CO.,
INC., and THOMAS A. VINCOI,

Defendants.

-and-

GLENN F. ROSSER,

Defendant to Counterclaim.

Plaintiff White Hotel Corporation and Defendant to Counterclaim Glenn F. Rosser having moved by Order to Show Cause signed by Justice Edward T. McGaffney and entered on August 29, 1963 for an Order substituting in the place and stead of Defendant Long Island Diamond-Roe Truck Co., Inc., as a defendant Mitchell H. Kay, as Trustee in Bankruptcy of Long Island Diamond-Roe Truck Corp., c/o Long Island Diamond Roe Truck Co., Inc., and

Said motion having duly come on to be heard before me on September 3, 1963 and having been duly submitted to the Court on that date and the defendants Long Island Diamond Roe Truck Co., Inc., and Thomas A. Vincoi having appeared on said motion,

Now, on reading and filing the Order to Show Cause signed by Mr. Justice Edward T. McGaffney and entered on August 29, 1963, the affidavits of service of such Order on August 29, 1963, the affidavit of Stephen R. Steinberg, verified

IN SENATE
JANUARY 14, 1964
FILED IN
CLERK OF THE COURT
COUNTY OF NEW YORK
1963

PRESENT: *Henry B. Friedman*
HON.

ORDER

Index No. 14125/67

Exhibit G

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August 29, 1968 and exhibits, and the affidavit of Louis P. Forstner verified on August 29, 1968, all in support of said motion; and their being no promise or appearance in opposition to said motion, and due deliberation having been had thereon;

Now, on motion of Davis & McQuinn, attorneys for White Motor Corporation and Glenn F. Hansen, it is

ORDERED, that Marshall H. Key, as Trustee in Bankruptcy of Long Island Diamond-Reo Truck Corp., c/o/a Long Island Diamond Reo Truck Co., Inc., be and he hereby is substituted as a defendant in the place and stead of Defendant Long Island Diamond Reo Truck Co., Inc., and it is further

ORDERED, that the title of this action be and it is hereby amended to read:

"WHITE MOTOR CORPORATION,
Plaintiff,

-against-

MARSHALL H. KEY, as Trustee
in Bankruptcy of Long Island
Diamond-Reo Truck Corp., c/o/a
Long Island Diamond Reo Truck
Co., Inc., and Thomas A. Vincel,
Defendants.

-and-

GLENN F. HANSEN,

Defendant to Counterclaim"

B E T T E R

Index No. 14135/67

FILED

13 1968

CLERK'S OFFICE

4/17
J.S.C.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WHITE MOTOR CORPORATION,

Plaintiff,

-against-

LONG ISLAND DIAMOND RAC TRUCK CO.,
INC., and THOMAS A. VINCE,

Defendants.

- and -

GLENN F. KEMMER,

Defendant to Counterclaim.

: STIPULATION

: Index No. 14135/67

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys for plaintiff WHITE MOTOR CORPORATION and defendant to counterclaim, GLENN F. KEMMER, and the attorney for MICHAEL H. FAY, Trustee in Bankruptcy of Long Island Diamond Rac Truck Corp., a/k/a Long Island Diamond Rac Truck Co., Inc., that whereas said parties are not infants or incompetents for whom a committee has been appointed and no person not a party has an interest in the subject matter of this action. The action of White Motor Corporation against Long Island Diamond Rac Truck Co., Inc. and the counterclaim of Long Island Diamond Rac Truck Co., Inc. against White Motor Corporation and Glenn F. Kemmer be, and the same hereby are discontinued with prejudice, without cost to either party as against the other. This stipulation shall not affect, and there shall be preserved, the rights of plaintiff against defendant Thomas A. Vince and said defendant's rights against plaintiff. This stipulation may be filed without further

Exhibit H

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notice, with the Clerk of this Court.

Dated: New York, New York
September 30, 1939

James G. McLean

JAMES G. MCLEAN, ACCOUNTANT
VIRGIN LITTON CORPORATION and
GLENN F. KOPPER

James P. McLean

JAMES P. MCLEAN, ACCOUNTANT
FOR LEECH, H. LEE, TRUSTEE
IN MINNESOTA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

THOMAS A. VINCEL, et al.,	:	
Plaintiffs,	:	69 Civil 753
-against-	:	<u>AFFIDAVIT OF</u>
	:	<u>LAWRENCE W. BOES</u>
WHITE MOTOR CORPORATION	:	
and GLENN F. KOMMER,	:	
Defendants.	:	

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

LAWRENCE W. BOES, being duly sworn, deposes and says:

1. I am a member of the firm of Reavis & McGrath, attorneys for defendants, White Motor Corporation and Glenn F. Kommer (hereinafter "White" and "Kommer" or "defendants"). Based on pleadings, affidavits, depositions and other papers submitted in this and other related actions, I am fully acquainted with prior proceedings in these actions and with the undisputed and documentary evidence recited herein.

2. This Court, in its Memorandum and Order, dated August 2, 1972, dismissing the fourth cause of action herein, ruled as follows:

"In the fourth cause of action no less than in any of the others the charge is of damage inflicted on L. I. Reo, its business, its affairs, its prospects, and its properties. Save for the references to the arrest or threatened arrest of Thomas Vincel, all of the acts complained of directly affect the interests of L. I. Reo primarily and damage the plaintiff[s] only to the extent of and by reason of their interest in L. I. Reo." (P. 61)

Thus, this Court left open the question as to Thomas Vincel's standing to complain about his arrest. In paragraphs 41 and 42 of Vincel's affidavit of April 17, 1973, submitted in opposition to defendants' motion for summary judgment, he purportedly sets forth certain "facts" concerning his arrest in connection with what has been referred to as the Makransky truck. As stated by Mr. Steinberg in his reply affidavit, he knew "nothing about any arrest until much later and not until after Makransky started his Supreme Court action in Makransky v. Long Island Reo Truck Co., 58 Misc. 2d 338, 295 N.Y.S.2d 240 (1968)."

3. As indicated in the above-cited reported decision of the New York Supreme Court, Suffolk County, White, Antellis, L. I. Reo and Vincel were all parties to this action represented by counsel. Certain findings were made by the Supreme Court (John P. Cohalan, Jr., Justice) relating to this truck, which findings Vincel now seeks to cover up. First, it was plaintiff Vincel as president of L. I. Reo who entered into a purported sale of a Reo diesel tractor (truck) by L. I. Reo to its subsidiary LIRCO Truck Leasing Corp. and the financing of that sale by assignment of the security sales agreement to Tinker National Bank on August 15, 1966, at least two and one-half months before defendants White and Kommer became more closely involved with L. I. Reo by the Financing and Voting Trust Agreements beginning in November 1966. Vincel seeks to conceal from this Court that his problems with Tinker and Makransky arose because the truck was already part of the security for L. I. Reo's debt to C.I.T. and White; that the purported sale and transfer

to LIRCO was never consummated and that the CIT-White lien was not paid in 1966; and that this truck was therefore one of the "out-of-trust" trucks.

4. In a subsequent action in the New York Supreme Court, entitled Tinker National Bank v. Long Island Reo Truck Co., Inc. et al., including as defendants White, Vincel, Antelis and Kommer, Vincel testified that at the time of the financing by Tinker of the purported sale by L. I. Reo to LIRCO he was aware of the prior lien held by CIT or White and that he would normally pay CIT or White upon such a sale within one or two days. In that deposition he claimed that White seized L. I. Reo's accounts in October 1966 before payment to CIT could be made. (A copy of an extract of this deposition taken July 29, 1971, pp. 49-57 is annexed hereto as Exhibit A.) This is patently nonsensical as there was no seizure or attachment or other legal action taken by White against L. I. Reo until August 25, 1967. (See Vincel affidavit sworn to April 17, 1973, ¶38.) He also admitted that because of a problem of insurance coverage the purported sale by L. I. Reo to LIRCO was never consummated and that the truck was one of those acknowledged by the subsequent security agreement of February 21, 1967 between L. I. Reo and White in which White retained its security interest. (Ex. A, pp. 56-57.)

5. Vincel's affidavit of April 17, 1973 (¶¶41-42) now alleges or implies that White, Kommer or Steinberg caused his arrest in connection with this truck by exercising White's senior lien and not paying Tinker upon sale of the truck by Vincel on L. I. Reo's behalf to Lawrence Makransky. This is flatly

contradicted by Vincel's own sworn testimony in the same deposition referred to above. (A copy of extract of this deposition of Vincel by Tinker's attorney (pp. 40-43) is annexed as Exhibit B.) In that action Vincel apparently filed a counterclaim against Tinker in which he alleges that Tinker maliciously seized the truck from Makransky, that as a consequence Vincel was "arrested and held up to scorn and ridicule and suffered great mental and physical distress, and suffered damages in the sum of one million dollars." (Ex. B., p. 40.) Vincel admitted that he was arraigned and a formal charge laid against him by Lawrence Makransky, the ultimate bona fide purchaser of the truck. (Ex. B. p. 41.) In the Tinker action Vincel stated that not White, but Tinker "certainly caused" the filing of the criminal complaint and that "Mr. Faulkner [Charles E. Falkner, an officer of Tinker] "threatened me with this that was going to happen. ...Unless I personally paid him, that he was going to do to me several horrendous things. The fact that he used Mr. Makransky is of little consequence." (Ex. B, pp. 41-42.) Thus, the charge that defendants White and Kommer caused Vincel's arrest in connection with the double financing of the Makransky truck is flatly contradicted by Vincel's own prior testimony that it was Makransky who caused Vincel's arrest for fraud after Tinker wrongfully seized the truck from Makransky and that Tinker caused Makransky to do so. Vincel's obvious tailoring of his sworn allegations and testimony to obtain damages wherever they may be found is nowhere more apparent.

6. Based on the above-stated undisputed facts that it was the Suffolk County Police Department who arrested Vincel

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upon a complaint filed by Makransky, there can be no triable issue of fact as to the allegation or implication that defendants caused Vincel's arrest. If he was arrested, he was apparently arraigned the following day and released on bail. The arrest was for fraud (Ex. B., p. 41), an offense which Vincel himself admittedly committed when he financed through Tinker the purported sale to LIRCO in August 1966. Nowhere is it alleged that the charge or arrest were without reasonable cause. Therefore, the allegations against White and Kommer with respect to Vincel's arrest are legally insufficient and without any credible factual basis.

Lawrence W. Boes
LAWRENCE W. BOES

Sworn to before me this
day of May, 1973.

Fred Isquith
FRED ISQUITH
NOTARY PUBLIC, STATE OF NEW YORK
No. 7045900
Qualified in Kings County
Commission Expires March 30, 1974

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STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

being duly sworn, deposes and says:

I am not a party to the action. On May , 1973 I served a copy of the within Affidavit of Lawrence W. Boes upon Hellerstein, Rosier & Rembar attorneys for the plaintiffs at their offices at 19 West 44th Street, New York, N.Y. by delivering to and leaving personally with the aforementioned at the addresses appearing above, a true copy thereof.

Sworn to before me this
day of May, 1973.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

358A

TIMBER NATIONAL BANK,

Plaintiff,

-against-

LONG ISLAND RED TRUCK CO., INC.

vs. LONG ISLAND DIAMOND RED TRUCK

CORP., THOMAS VINCEL, WHITE MOTOR

CORP., SAMUEL ANIELIS and GLEN

KOENIGER,

Defendants.

200 West Main Street

Babylon, New York

July 29, 1971

11:15 o'clock a.m.

EXAMINATION BEFORE TRIAL of THOMAS VINCEL, one
of the Defendants herein, taken by the Plaintiff and Co-
Defendants, pursuant to Notice, held at 200 West Main Street,
Babylon, New York, on July 29, 1971 at 11:15 o'clock a.m.

APPEARANCES:

MESSRS. GURNIGLE, KILLIAN & JOHNSON,

Attorneys for Plaintiff

Pen & Pencil Building

Main Street

Port Jefferson, New York;

BY: J. TIMOTHY SHEA, ESQ.,
of Counsel.



CERTIFIED TRUE REPORTING
FOTTE OFFICE BUILDING

800 WALT WHITMAN ROAD
HUNTINGTON STATION, NEW YORK

(516) 271-6565
271-6566

EXHIBIT A

A P P E A R A N C E S: - 359A

MESSRS. REILLY, LINE & SCHNEIDER,
Attorneys for Defendants
Long Island Red Truck Co., Inc. and
Thomas Vincel
200 West Main Street,
Babylon, New York;
BY: GEORGE HOFFMAN, ESQ.,
of Counsel.

MESSRS. READES & McGRATH,
Attorneys for Defendant
White Motor Corp.
1 Chase Manhattan Plaza,
New York, New York;
BY: LAWRENCE W. DOES, ESQ.,
of Counsel.

* * *

MR. HOFFMAN: May we agree that the examination
of Mr. Vincel will not be used until such time as we
continue the examination of Tinker National Bank?

Off the record.

(Discussion off the record.)

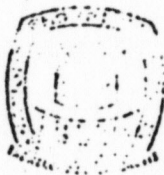
MR. SHEA: That is right.

MR. HOFFMAN: We had another problem, the examina-
tion on the part of White. According to the record
you were going to give me an answer as to whether you
would accept a cross complaint.

Off the record.

(Discussion off the record.)

MR. DOES: It is here, May 21, 1971 in which it



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(Discussion off the record.)

MR. HOFFMAN: He signed it. Ask Mr. Vincel if there was an agreement between Long Island Rod and White or between C.I.T. and White.

MR. BOES: I asked whether he was aware of it because that is encompassed in paragraph 9 of the complaint.

MR. HOFFMAN: I assume that there was a contract and he was aware of it.

You started to ask him what in substance --

MR. BOES: -- Let me ask the questions and maybe you will understand them.

Q Mr. Vincel, at the time of the financing of the vehicle by Tinker National Bank, were you aware that there was an outstanding amount due on that vehicle owing to either Universal C.I.T. or White Motor Corp. as the assignee of Universal C.I.T.?

A I answered that question for this gentleman, yes.

Q What time was that, of the financing by Tinker National Bank?

MR. HOFFMAN: Of what, of the particular truck in question?

MR. BOES: Of the particular truck in question.

MR. HOFFMAN: That would be contained on the date



that is attached to the Plaintiff's complaint, which is August 15, 1966.

Q At that time, had White Motor Corp. taken any action to exercise its rights under the security agreement with Long Island Roo?

MR. HOFFMAN: I will object to "exercising its rights." That would be a legal conclusion. I would imagine it is going to be the contention of whatever it did, it did not exercise its rights. It had no rights.

If you are asking did it take any action, I have no objection to that question.

Q Had it yet taken any action with respect to Long Island Roo and had the sheriff yet seized any assets with Long Island Roo?

A At the time we negotiated with Tinker?

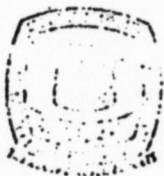
Q Yes.

A No.

Q Were you aware that you were required under the agreement with Universal C.I.T. to pay any proceeds of any sale of a vehicle by Long Island Roo to Universal C.I.T.?

MR. HOFFMAN: I would submit that the contract between C.I.T. and Mr. Vincel would speak for itself.

MR. DOES: I am asking whether Mr. Vincel was



1 aware of it, not whether there was or was not.

2
3 MR. HOFFMAN: I will object to the question and
4 direct the witness not to answer.

5 Q What was the practice of Long Island Red when it
6 sold the vehicle to a purchaser, whether under a retail
7 installment sales contract or not, with respect to its
8 obligation to Universal C.I.T. and/or White Motor Corp.?

9 MR. HOFFMAN: I will object to this on the grounds
10 that the only thing we are talking about is this
11 particular truck.

12 MR. BOES: He testified under examination with
13 Mr. Shea to a practice, and I would like to get what
14 that practice was.

15 MR. HOFFMAN: I would submit that the practice
16 he engaged in would have nothing to do with the trans-
17 action with regard to that particular truck as it is
18 special between the two Defendants. I have no ob-
19 jection as to what he did with the monies with regard
20 to this particular truck; but, any practice before
21 this would have no bearing on this; unless you can
22 show me how it does.

23 MR. BOES: I do not have to prove to you whether
24 something is relevant. I believe it is relevant and
if necessary, we will go through special term and ask



1. for rulings on this, but I think it is quite relevant
2. to determine whether there was a practice and whether
3. this practice was followed in this particular case.
4.

5. Q I ask the question again; whether there was a
6. practice in paying Universal C.I.T. and/or White Motor Corp.
7. when there was a sale by Long Island Reo?

8. MR. HOFFMAN: I will withdraw the objection and
9. let him answer the question.

10. A We would, in this case, like most others, draw
11. a check probably within one or two days.

12. Q What happened in this particular case when you
13. got the money from Tinker National Bank to finance the sale
14. by Long Island Reo to L.I.R.C.O?

15. MR. HOFFMAN: I thought he testified to that.

16. Q I do not think it was too clear what happened in
17. this particular case.

18. A What are you talking about, Tinker again?

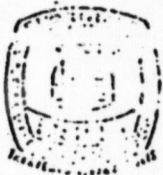
19. Q Yes, Tinker financed the purchase of this partic
20. truck in question?

21. A Yes.

22. Q Serial No. 565504; it financed the purchase of
23. the truck by L.I.R.C.O. from Long Island Reo, correct?

24. A Yes, sir.

25. Q And you received approximately, \$13,500 from th



1
2 financing?

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3 A Yes, sir.

4 Q What happened to that money?

5 A That money was deposited by Tinker in our account,
6 I believe.

7 Q And was Universal C.I.T. paid off within one or
8 two days or was -- answer the question first; was Universal
9 C.I.T. paid off?

10 A A check was drawn as is always the case. A check
11 is drawn immediately or within one or two days and put with
12 other checks and then it is given out at a propitious time.
13 This one was not paid. You mean was the check sent to C.I.T?
14 Was it paid through the bank? No, it was not. The check
15 was issued.

16 Q What happened to the check?

17 A Well, the check was eventually destroyed because
18 the White Motor Company came in and seized.

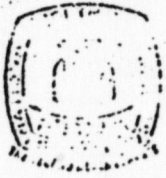
19 Q When did that happen?

20 A Approximately, two months later or six weeks, six
21 to eight weeks later.

22 Q The Tinker National Bank financing occurred in
23 August, 1966?

24 A That is correct.

25 Q And when did the White Motor Corp. allegedly seize



1
2
3 these checks?

4 A In August of '66, October of '66, excuse me.

5 Q Do you have a copy of those checks, records, to
6 establish this?

7 A It would show in the checkbook stub and it might
8 possibly -- the girl filed the checks since they were no
9 longer usable. She generally folded the check and stapled
10 it back onto the appropriate stub. It is most probably
11 there.

12 MR. BOES: Can I have a stipulation that this
13 check or a copy of it will be forwarded to us within
14 two weeks?

15 MR. HOFFMAN: Yes.

16 Q Was there a transfer of the vehicle itself, the
17 motor vehicle, from Long Island Reo to L.I.R.C.O. Truck
18 Leasing Corp?

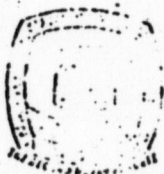
19 A Yes, there was.

20 Q And was that transfer indicated by a motor
21 vehicle registration?

22 A Yes, there was.

23 Q And what happened?

24 A When we went to register the vehicle -- what was
25 holding the vehicle registration up, was the insurance. The
insurance broker had indicated to us in a prior conversation

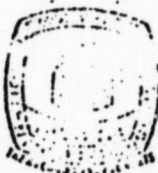


Vincel

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55

1 since L.I.R.C.O. Truck Leasing Corp. was wholly owned by
2 Long Island Roo Truck Co., there would be no problem in
3 adding the name onto our master dealer's policy, which, if
4 you understand, on a dealer policy, he can add any number of
5 self-owned vehicles, no charge, and big diesel trucks of
6 this type on an open basis are very expensive because you
7 have to register the vehicle for the most weight that you
8 think your customer is going to use, to keep it legal. So,
9 we selected a very high gross weight, over one hundred
10 thousand pounds, so that registration and insurance would be
11 very expensive, particularly the insurance; but the broker
12 informed us he felt there would be no problem in just adding
13 L.I.R.C.O. Leasing Corp. onto the dealer's master automobile
14 policy. However, after we got the vehicle in, after we
15 prepared it for demonstration, after we financed it, and
16 after we issued -- the girl typed up a normal set of papers,
17 invoice, title, all the rest -- the last item to be secured
18 for registration, which was approximately five days after
19 Mr. Faulkner gave us the money, was the FS-1. So, pressing
20 the insurance broker, telling us he has all these problems,
21 that the insurance company, for some reason or the other,
22 wasn't going to go along with this idea even though L.I.R.C.O.
23 Truck Leasing was wholly owned by Long Island Roo Truck Co.--
24 something to do with leasing problems. The industry had a
25



CERTIFIED TEAGUE REPORTING
FORTE OFFICE BUILDING

900 WALT WHITMAN ROAD
HUNTINGTON STATION NEW YORK

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271-6566

1
2 bad record or something, I don't know.

3 They wanted a separate policy in any event. The
4 separate policy was over two thousand bucks and after we
5 investigated that, we found that the truck mileage tax would
6 be a problem and all these demonstration problems were
7 poorly conceived, to say the least, and he suggested that
8 since Long Island Rec wholly owned Long Island Truck Leasing
9 anyhow, it really didn't matter whose title name it appeared
10 in, so we re-issued a title and voided the L.I.R.C.O. Truck
11 Leasing title and had no additional expense.

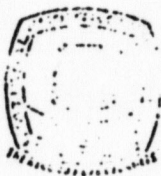
12 Q After October, 1966, when White Motor Corp. took
13 certain steps to exercise its rights under financing agree-
14 ments, did there come a time when you entered into a security
15 agreement between Long Island Rec Truck Co., Inc. and White
16 Motor Corp?

17 A Yes.

18 Q Is this document, to be marked for identification,
19 a copy of that agreement executed by you on behalf of Long
20 Island Rec Truck Co., Inc?

21 A It appears to be, although the schedule was added
22 at a later date, I recall, and the vehicle in question is
23 in the agreement.

24 Q Is the schedule referred to in the agreement as a
schedule of motor vehicles owned by Long Island Rec Truck



2 Co., Inc., in which it is conveying a security interest to
3 White Motor Corp? - 368A

4 A I recall that that was the purpose of the agree-
5 ment.

6 Q And is it true that this particular truck in
7 question, Serial No. 565504, is listed in the schedule?

8 A That is correct.

9 MR. SUEA: What is the date of that?

10 MR. DOES: February 21, 1967.

11 Q And did you, by this agreement, represent that
12 this truck was then owned by Long Island Rco?

13 MR. HOFFMAN: What do you mean "did he represent"

14 THE WITNESS: I would like to answer that one.

15 MR. HOFFMAN: No, you are not going to answer that.
16 There is an objection to it.

17 MR. DOES: Is there an answer to it?

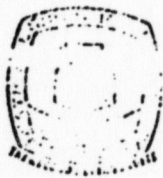
18 MR. HOFFMAN: There is no answer.

19 Q I would like you to read the third full paragraph
20 and ask you whether you had read this agreement before you
21 signed it. (Submitting)

22 MR. HOFFMAN: I will object to that.

23 MR. DOES: I am asking whether he read this
24 agreement before he signed it.

25 MR. HOFFMAN: There is an objection, and I direct



2 ever paid their loan by Reo?

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3 A The Tinker National Bank was reimbursed this
4 money in one form or another.

5 Q But there was no direct --

6 A (Interposing) But not by a direct payment check
7 from the Long Island Reo.

8 Q Mr. Vincel, I am going to direct your attention
9 to your amended answer and counter claim in which, in your
10 first cause of action, you allege that the Plaintiff seized
11 the truck with full knowledge of consequences, and it was
12 done maliciously, and we are talking about the truck after
13 the sale to Makransky.

14 You further allege that you were arrested and
15 held up to scorn and ridicule and suffered great mental and
16 physical distress, and suffered damages in the sum of one
17 million dollars.

18 Will you tell me, were you arrested?

19 A I don't recall the exact date, but it was some
20 short period of time after Mr. Makransky's truck was seized.

21 Q Where were you taken?

22 A To one of the police headquarters out here in
23 Suffolk County. Suffolk County Precinct. I don't know the
24 address. I was mugged, finger printed, incarcerated, put
in jail.

CERTIFIED TEAGUE REPORTING
FORTE OFFICE BUILDING

500 WALT WHITMAN ROAD
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(516) 271-6565
271 6566

EXHIBIT B

1
2 Q Were you arraigned for this? Did you come before
3 a judge?

4 A Yes, sir, later that day.

5 Q And was a formal charge laid against you?

6 A Yes.

7 Q For what?

8 A Fraud and I don't know what else.

9 Q Who was the complainant?

10 A Lawrence Makransky.

11 Q To your knowledge, did Tinker National Bank ever
12 file a criminal complaint against you for this vehicle?

13 A No, but they certainly caused it.

14 MR. SHEA: Strike the answer as not responsive.

15 Q To your knowledge, did Tinker National Bank ever
16 approach the police department with respect to this vehicle?

17 A I don't understand your question.

18 Q You are saying you were arrested on the basis of
19 a complaint by Lawrence Makransky, is that correct?

20 A That is correct.

21 Q And to your knowledge, Tinker National Bank never
22 filed a complaint?

23 A Not a complaint, but I would like to elaborate.

24 MR. HOFFMAN: No, the answer is no.

THE WITNESS: Mr. Faulkner threatened me with this



2 that was going to happen.

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3 Q That what was going to happen?

4 A Unless I personally paid him, that he was going
5 to do to me several horrendous things. The fact that he
6 used Mr. Makransky is of little consequence.

7 MR. SHEA: I will have to object to that last
8 answer.

9 Let's pass on.

10 Q The second cause of action, which you allege in
11 your counter-claim against the bank: Tinker National Bank
12 seized certain bank accounts and closed them out?

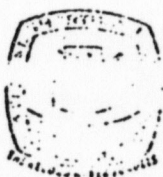
13 A Yes, sir.

14 Q Now, can you tell us which accounts were closed?
15 Which accounts are you talking about in your second cause
16 of action?

17 A Yes, I can tell you.

18 Long Island Reo Truck Company had a checking
19 account at the Smithtown branch. They had a reserve account
20 at the Smithtown branch, reserve checking account, and Long
21 Island Reo had a reserve account at the Patchogue office.

22 In addition to which, the L.I.R.C.O. Truck
23 Leasing had an account at the Smithtown branch and another
24 firm, L.I.R.C.O. Enterprises had an account at the Smithtown
branch.



1 Q What is that third company you said?

2 A L-I-R-C-O.

3 Q Will you tell me who L.I.R.C.O. Enterprises was?

4 A That was a real estate holding corporation. The
5 properties were not in the name of the truck dealer. They
6 were in a separate corporation.

7 Q Can you give me the approximate amounts that were
8 in these accounts at the time?

9 A In the Long Island Reo account, approximately,
10 \$6,000.

11 Q And L.I.R.C.O. account?

12 A Approximately, \$1,000.

13 Q And in the L.I.R.C.O. Enterprises account?

14 A A few thousand dollars.

15 Q Two, three thousand dollars?

16 A Between two and three thousand dollars. I am
17 not certain of that.

18 Q And the bank closed those accounts down?

19 A Yes, the sheriff went into the Tinker bank in
20 Smithtown, as I understand it, with a warrant to seize what-
21 ever was in the Long Island Reo accounts on behalf of the
22 White Motor Company, and I am informed that Mr. Faulkner told
23 the Sheriff there were no assets of any kind in his bank and
24 then he closed the accounts without anyone's knowledge.
25



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

373A

THOMAS A. VINCEL, et al.

Plaintiffs,

-against-

WHITE MOTOR CORPORATION
and GLENN F. KOMMER,

Defendants.

69 Civil 753

AFFIDAVIT OF
GLENN F. KOMMER

STATE OF CONNECTICUT)
COUNTY OF NEW HAVEN) ss.:

GLENN F. KOMMER, being duly sworn, deposes and says:

1. I am one of the defendants in the above action and have personal knowledge of the facts stated in this affidavit.
2. I am informed by my attorneys that the motion for summary judgment brought by defendants White Motor Corporation and myself is based on issues of law and indisputable fact and it is not required that I rebut each and every misstatement made in the affidavit of Thomas A. Vincel, sworn to April 17, 1973. Nevertheless, I have read with much interest Mr. Vincel's affidavit and I can categorically state with, I hope, an adequate degree of unemotionalism that it is the most fanciful and imaginative pack of misrepresentations and distortions I have ever encountered, other than perhaps the indication of dates of certain meetings and events which took place. Thus, I submit this affidavit in response to Mr. Vincel's affidavit to rebut some of the more significant misstatements.

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3. Although I am not knowledgeable about the transactions and history of the L. I. Reo dealership before June 1966, when I became Treasurer of the Reo Division of defendant White, I can state that the alleged understanding or policy of the Company, supposedly stated to Vincel in 1962 by one Leo DeCurdy, was superseded by several formal written dealer agreements and the final Financing Agreement and Voting Trust Agreement in 1966, which superseded all prior agreements and contained full integration clauses excluding all but formal written amendments. It is my understanding that Vincel and his co-plaintiffs base this lawsuit on their alleged status as principals of L. I. Reo and as signatories of the Financing and Voting Trust Agreements. Therefore, it would seem elementary justice to me as a layman that if those agreements bound the defendants, the plaintiffs cannot repudiate those portions which limit their rights.

4. Never in the course of my dealings with L. I. Reo and its president Vincel did I state I would "car check" them "to death." (Vincel affidavit, p. 6, ¶13.) In fact, as already made plain in our previous papers, it was C.I.T. which advanced funds to L. I. Reo for purchase of White's trucks and it was C.I.T. which policed L. I. Reo's floor plan and which subsequently discovered, as I was told, that L. I. Reo was defrauding C.I.T. and White by switching truck identification plates. If L. I. Reo had a right to "float" its repayment of funds advanced by C.I.T. by as much as \$100,000, there would have been no reason to engage in such subterfuges.

5. My recollection of the meeting between representatives of L. I. Reo and White on November 2, 1966, at the La Guardia

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Airport Restaurant is that cancellation of the franchise was not mentioned. White was primarily interested in obtaining repayment of the monies necessarily paid to C.I.T. by White upon L. I. Reo's default. It was apparent at that time that continuation of the L. I. Reo franchise and correction of its financial affairs was the only way to obtain repayment for White.

6. At no time did I or other representatives of White plan or discuss a private call by Albert Coppack to Vincel threatening arrest. (Vincel affidavit, p. 7 ¶17.) Coppack was a regional employee of White's Reo Division who was subordinate to me. He is no longer with White and it is improbable that he would have threatened Vincel with arrest without first discussing it with me.

7. Vincel distorts the account of events following disclosure that L. I. Reo was "out of trust" by a complete omission of his own conduct--namely, his continual pleas that L. I. Reo be permitted to work out its default over a period of time. It was the decision of White, based on information supplied by Vincel, that some sort of arrangement had to be devised to ensure repayment to White over a period of time. He pleaded for financial and administrative assistance from White and it was his attorney, Eliot Lombard, Esq., who suggested a voting trust among other alternatives. Obviously, in light of L. I. Reo's defalcations, the arrangement had to be stringent in protecting White from further fraud. To my knowledge neither White nor any of its representatives exerted any coercion on L.I. Reo and its principal except to insist upon White's right to

repayment of the admitted debt of L. I. Reo to White. The provision of the Voting Trust Agreement barring me, as Voting Trustee, from dissolving or liquidating L. I. Reo therefore could not have been understood to prevent White from asserting its lien rights under the companion Financing Agreement.

8. Furthermore, the Voting Trust Agreement should speak for itself as to the lack of operating supervision over L. I. Reo to be exercised by me as Voting Trustee. The Voting Trust Agreement was seen as a "stopgap" device whereby L. I. Reo and its stockholders would not be able to avoid its debt to White by corporate stratagems. It is an extremely simple document wherein I was given (1) "the exclusive right to vote the shares deposited" thereunder and (2) the power to "cause L. I. Reo's Board of Directors to appoint a person acceptable to him [me] to act as L. I. Reo's General Manager." (Voting Trust Agreement, Ex. B to complaint, p. 6) Obviously, this agreement and the integration clause exclude any possibility of an agreement to hire a specified person as General Manager. We had obvious difficulty in finding a person willing to manage the financial affairs of L. I. Reo, an ailing company, and eventually Mr. Antelis was referred to me by L. I. Reo's accountant. It was my understanding which was made plain to both Antelis and L. I. Reo's management, that the L. I. Reo business would continue to operate under the existing officers with Antelis and the L. I. Reo management being jointly responsible for attempting to resolve L. I. Reo's accounting and financial problems. As explained in accompanying affidavits, this could not relieve Vincel and other L. I. Reo executives from their own responsibilities as corporate officers. Antelis was not "in complete charge" as

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alleged by Vincel (Vincel affidavit, p. 10, ¶126); others including Vincel co-signed L. I. Reo checks and were jointly responsible for receipts and disbursements of L. I. Reo.

9. The allegation that White and I had entered into the Voting Trust Agreement with L. I. Reo and the plaintiffs with the idea of "destroying the dealership" is plainly untrue, for when we discovered in February 1967, within one or two months of the Voting Trust Agreement, that \$40,000 in checks issued by L. I. Reo had bounced which were issued to White in reduction of the CIT indebtedness at a time when Antelis was not yet General Manager, White accepted yet another note from L. I. Reo, for \$42,739.56, dated February 10, 1967. This forbearance by White of its rights was hardly the kind of Draconic tactics alleged by Vincel.

10. The general notice to White dealers dated August 25, 1967, annexed as Exhibit B to the Vincel affidavit, reveals not the predatory tactics alleged by Vincel, but the usual cooperation between White's separate manufacturing divisions whereby products of each division were being sold through all dealers. Neither White nor L. I. Reo could lawfully guarantee that L. I. Reo would have a monopoly of retailing Reo products in the metropolitan New York area.

11. Of course, I deny on my behalf and on White's behalf, the series of conclusory allegations made in paragraph 31 of Vincel's affidavit. Both White and I, as Treasurer of White's Reo Division, took action to protect White but I flatly deny any violation of contractual and fiduciary obligations to

Vincel and other plaintiffs. The account of dealings with the St. Louis Warehousing Company and the Bank of Commerce (Vincel affidavit ¶135-37) fails to state that the parts inventory financing arrangement proposed by L. I. Reo and the lenders would have required White to underwrite L. I. Reo's debt by even greater amounts, a provision never agreed to by White in paragraph 7 of the Financing Agreement. Vincel's account of his deep involvement in this endeavor to secure outside financing in March through May 1967 (Vincel affidavit ¶135-37) plainly contradicts his argument that the voting trust relieved him of all financial responsibilities and his pretensions that he "devoted myself to selling trucks", etc. (¶125-26)

12. It is my understanding that Vincel's affidavit contains statements contradicted by his own prior affidavit given in the state court litigation concerning the final debacle on August 25, 1967. (Vincel affidavit, pp. 20-21, ¶38.) My recollection corresponds with Mr. Vincel's prior affidavit to the effect that I referred questions by Mr. Vincel to the sheriff who was present with Mr. Cunningham and myself and that Vincel had an opportunity to consult by telephone with his attorney, Eliot Lombard, Esq., before the sheriff proceeded any further. After consulting with Mr. Lombard, Vincel and others willingly cooperated with White's efforts.

13. Whether or not there are issues of fact posed above between Mr. Vincel and myself, it is defendants' submission that none of the injuries alleged by Vincel in his affidavit are personal in nature, all relate to L. I. Reo, a separate corporation owned by plaintiffs and others, and full compensation

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for all claims between L. I. Reo and White and myself were compromised in the bankruptcy proceedings in this Court. I respectfully request that this dispute be put finally to rest, that defendants' motion for summary judgment be granted and that judgment for defendants be ordered entered forthwith.

/s/ Glenn F. Kommer
GLENN F. KOMMER

Sworn to before me this

7th day of May, 1973.

/s/
Bruce Fisher
Notary Public, Qualified State
of Connecticut; County of
New Haven-
No. 35235
Commission Expires March 1, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

380A

----- x
THOMAS A. VINCEL, et al.

69 Civil 753

Plaintiffs

- against -

WHITE MOTOR CORPORATION and
GLENN KOMMER,

Defendants
----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

Robert P. Levine, being duly sworn, deposes and
says:

1. I am an attorney at law associated with
Hellerstein, Rosier & Rembar, attorneys for the above named
plaintiffs.

2. Attached hereto is an affidavit of Albert
Coppack, sworn to the 27th day of May 1968. (According
to ¶6 of Glenn Kommer's affidavit, Coppack was a regional
employee of White's Reo division.) Said affidavit has
remained in our office files since the date of its execution.
I submit the affidavit at this time to further demonstrate
that there are material questions of fact upon which there
is substantial dispute:

(a) Stephen R. Steinberg's affidavit (¶7)
denies his presence at the L. I. Reo premises on the
morning of November 2, 1966. Thomas Vincel's affidavit
(¶¶ 15 & 16) places Steinberg on the premises sometime
before 3:00 P. M., and at a restaurant that evening.
Coppack's affidavit establishes that Steinberg met with

Vincel during the evening of November 2, 1966.

(b) Steinberg's affidavit (¶¶ 5 and 8) has Vincel pleading for a second chance and begging White not to exercise its lien. Kommer's affidavit (¶6) denies threatening Vincel with arrest. Vincel's affidavit (¶¶ 15, 16, & 17) claims that there were threats of criminal prosecution and arrest. Coppack's affidavit confirms that there were threats of arrest.

3. The foregoing is merely an example as to a dispute of material facts concerning plaintiffs' causes of action concerning duress in connection with the execution of the Financing Agreement and Voting Trust Agreement, and bad faith in connection with the Automobile Dealer's Franchise Act.

4. The three affidavits submitted by defendants in response to Vincel's affidavit demonstrate that plaintiffs' and defendants' versions of what happened differ considerably. I do not see how Steinberg's affidavit can state (¶2) that judgment must be granted on uncontested facts, and that there are no material triable issues of fact.

5. I also attach a copy of a stipulation discontinuing the New York State Supreme Court action in which White and Vincel were claiming against each other. Said

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stipulation discontinued the action "without prejudice and
without cost to either party as against the other".

Robert P. Levine

Sworn to before me this
10th day of May 1973.

Notary Public

FRANK R. CURTIS
Notary Public, State of New York
No. 24-5389900
Qualified in Kings County
Commission Expires March 30, 1974

383A

STATE OF NEW YORK)
 : SS:
COUNTY OF DUTCHESS)

ALBERT COPPACK, being duly sworn, deposes and says:

On the evening of November 2, 1966, while in the employ of the Rec Division of the White Motor Corporation, I attended a meeting at a cocktail lounge at LaGuardia Airport in New York City. Besides myself, there were present Neil Cochran and Glenn Kommer, both officers of the Rec Division; Stephen Steinberg, of the New York law firm representing White; and a Mr. Cummings, company counsel for White. The meeting was also attended by Thomas A. Vincel and Nuno Tardo of Long Island Rec Truck Co., Inc.

Although I did not engage too actively in the conversation, I observed the entire proceedings which seemed to take the form of an examination of Vincel and Tardo by Steinberg. The latter part of the meeting resulted in requests by White representatives and Steinberg to Vincel and Tardo to enter into certain agreements or sign certain agreements or documents the following morning. The meeting was concluded after it was agreed by all, except myself, to meet at 9:30 A.M., on November 3, 1966 at the office of Stephen Steinberg, in New York City. Vincel and Tardo were to consider the demands overnight. Everyone departed at approximately 11:00 P.M. I was not required to attend the meeting the next day.

After the meeting of November 2nd broke up, I made several attempts to reach Vincel at his residence, each time

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reaching Mrs. Vincel. I did not give my name and tried to disguise my voice, since I did not want her to recognize it, for we were acquainted. About 1:30 A.M. I finally did make contact with Vincel by phone. I tried to disguise my voice but Vincel kept insisting he knew who I was. I finally instructed him to call me at a certain pay phone number from outside his house because I lead him to believe his home phone was tapped. Vincel did call me some ten minutes later and I told him that the 9:30 A.M. meeting was arranged so that if he and Tardo did not cooperate in every way with the demands which had been made (by Cochran, Kommer, Steinberg and Cummings), they would never leave the building without being arrested; that the White people were all prepared for such action and it was my purpose in contacting Vincel to let him know what he and Tardo were in for. Vincel thanked me and we concluded our conversation.

Albert Coppack
ALBERT COPPACK

Sworn to before me this

27th day of February 1968

Karen Wachtel

Notary Public

HARRY WOLKOFF
NOTARY PUBLIC
NEW YORK

385A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
WHITE MOTOR CORPORATION,

Plaintiff,

-against-

KAY and VINCEL,

Defendants.
-----x

Index No. 14135/67

STIPULATION DISCONTINUING
ACTION

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that whereas this action having been previously discontinued with prejudice as to defendant, Kay, and the counter-claims of said defendant having likewise been discontinued, and no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action by the plaintiff against Thomas A. Vincel and Thomas A. Vincel's counterclaims against the plaintiff, be and the same hereby are discontinued without prejudice and without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court.

DATED: New York, New York
October 15, 1968.

Reavis & McGrath
REAVIS & McGRATH
Attorneys for Plaintiff
1 Chase Manhattan Plaza
New York, N.Y. 10005

Rembar & Zolotar
REMBAR & ZOLOTAR
Attorneys for Defendant, Vincel
19 West 44th Street
New York, N.Y.

Thomas A. Vincel
THOMAS A. VINCEL

386A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

THOMAS A. VINCEL, et al.,

Plaintiffs,

-against-

WHITE MOTOR CORPORATION and
GLENN F. KOMMER,

Defendants.

----- X

69 C 753

MEMORANDUM
and
ORDER

Appearances:

MYRON S. ISAACS, Esq. and ROBERT P. LEVINE,
Esq. (Messrs. HELLERSTEIN, ROSIER &
REMBAR of Counsel) for plaintiffs

LAWRENCE W. BOES, Esq. (Messrs. REAVIS &
McGRATH and FRED TAYLOR ASQUITH, Esq.,
of Counsel) for defendants

DOOLING, D. J.

After the Memorandum and Order of August 2, 1972,
were entered plaintiffs filed a motion to amend the com-
plaint and, later, defendants filed a motion for summary
judgment.

The background of the action is detailed at pages
1-26 of the August 2, 1972, Memorandum, and the original
complaint (as elaborated and, to an extent, particularized
in certain answers to interrogatories) is explained at

pages 26-40.

The original and proposed amended complaints
~~XXXXXX~~ compare as follows:

FIRST COUNT

(a) Paragraph 3 of both complaints alleges the number of voting (Class A) and non-voting (Class B) shares of L.I. Reo owned by each plaintiff. Former paragraph 3 then alleged in a paragraph now omitted in the amended complaint

"The damages to each of the plaintiffs as hereinafter pleaded in the FIRST, SECOND, THIRD, FOURTH, FIFTH and SIXTH causes of action are proportionate to their respective holdings of the 111.19 shares as aforesaid."

(b) Paragraphs 4 through 9 of the amended complaint are new. Each alleges in detail the salary and other employment benefits received by Thomas Vincel (4), Nuno Tardo (5), William E. Breen (6), Joseph Rummo (7), Rolf Hoeger (8), and P. Aiello (9).

(c) Paragraphs 10 through 13 of the amended complaint are identical with paragraphs 4 through 7 of the original complaint.

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(d) Paragraph 8 of the original complaint alleged that Kommer was the person designated by White to be trustee ~~XXXXXX~~ under the voting trust agreement between Kommer, L.I. Reo and the shareholders of L.I. Reo and its complaint affiliates. Paragraph 14 of the amended/changes "and the shareholders of ..." to "and certain shareholders of L.I. Reo and its affiliated corporations, including THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN who held, and transferred to Kommer pursuant to the Voting Trust Agreement in exchange for Voting Trust Certificates, 46.19 shares (85%) of the Class A (voting) stock of L.I. Reo." (The change is not in the facts alleged. See Memorandum of August 2, 1972, pp. 14-16.)

(e) Paragraphs 9 through 12 of the original complaint are identical with paragraphs 15 through 18 of the amended complaint.

(f) Original paragraph 13 alleged that from and after 1959 L.I. Reo and its predecessor dealt in Reo trucks and parts under successive franchise agreements with White and that when the Reo and Diamond T divisions of White were combined L.I. Reo became the dealer in Diamond Reo trucks and parts under franchise from White

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for Queens, Nassau and Suffolk Counties. Differing in form only, the amended complaint alleges that from 1959 pursuant to White franchises for the three counties "the business of L.I. Reo was the sale of trucks and parts manufactured by White ... and the servicing of trucks manufactured by White The trucks were sold under the Reo label and in 1967 the Diamond-Reo label."

(g) Paragraph 20 of the amended complaint adds to the earlier charge of paragraph 14 - that White and Kommer conspired to get control of and ruin L.I. Reo and to injure ~~me~~. "L.I. Reo's stockholders" - the words "officer and employees."

(h) Paragraph 21 differs from paragraph 15 in describing the signatories to the November 23, 1966 Agreement not simply as "the major shareholders" of L.I. Reo but as "employees, officers and the major shareholders" of L.I.Reo. The paragraph then states that no other shareholders were signatories, but it also adds that Rummo, Hoeger and the Aiello's signed the release called for by paragraph 1 of the Agreement.

(i) Paragraph 22 differs from paragraph 16 in

omitting to characterize Vincel, Tardo and Breen as "the major holders of the voting stock of L.I. Reo" and its affiliates.

(j) New paragraph 23 differs from old paragraph 17: paragraph 17 alleged that White required "the holders of all the stock of L.I. Reo " and its affiliates to enter into the voting trust agreement - "with defendant Kommer," and that pursuant to that agreement Vincel, Tardo and Breen deposited their shares with Kommer; new paragraph 23 alleges that White required Vincel, Nuno and Irene Tardo and William and Virginia Breen to enter into the agreement and transfer "all their shares" of L.I. Reo (and affiliate) voting stock.

(k) Paragraph 18 of the original complaint is omitted: it alleged that a clause in the voting trust called for the application to it of New York law and that Kommer kept the stock in New York.

(l) Paragraphs 24 and 25 of the amended complaint are new.

(i) Paragraph 24 alleges that Vincel, the Tardos and the Breens were signatories and that the "Consent

and Agreement of Non-Signatory Shareholders" .
was signed by Grace Vincel, Rummo, Hoeger
and the Aiello and that Vincel, Tardo, and
Breen deposited all their L.I. Reo voting
shares, that Vincel, Irene Tardo and Virginia
deposited
Breen/their Lirco Enterprises, Inc., shares,
that Vincel and Tardo deposited their shares
of Lirco Credit Corporation, and all received
voting trust certificates. See Memorandum of
August 2, 1972, pp. 14-16.

(ii) Paragraph 25 alleges that in the
Voting Trust Agreement Kommer agreed not to
dissolve or partly liquidate the corporations
without the written consent of the "signatories,"
and then alleges that the Agreement provided
that the trustee "would be liable for" such
holders
loss or damage as the certificate/might
suffer by reason of his willful misfeasance
or gross negligence" (The reference is to
the "No Liability" paragraph, 14, of the
voting trust agreement.)

(m) Paragraph 19 of the original complaint is identical with paragraph 26 of the amended complaint.

(n) Paragraph 27 differs from paragraph 20 of the original complaint in alleging that pursuant to the Voting Trust Agreement White and Kommer selected Antelis as General Manager and required the L.I. Reo board to appoint him, which it did by Board resolution appointing Antelis to serve "at the pleasure of G.F. Kommer, voting Trustee." Paragraph 20 had alleged that "as a result of meetings in ... New York ... Kommer selected ... Antelis "to be General Manager and required the L.I. Reo directors to elect him, which it did by the board resolution.

(o) Paragraphs 28 through 32 of the amended complaint are the same as paragraphs 21 through 25 of the original complaint.

(p) Paragraph 33 of the amended complaint differs from paragraph 26 of the original complaint [which alleged that, in executing the common purpose of White and Kommer to destroy the L.I. Reo business and injure plaintiffs, they claimed that their own acts (direct and through Kommer and Antelis) constituted breaches of L.I. Reo's

agreements with White] by substituting for the former characterization of the acts as acts meant to "evade" the contractual and franchise obligations of White to L.I.Reo and "the trust obligations of ... White ... and Kommer to plaintiffs," the new characterization of the same acts as acts meant to "evade the contractual and fiduciary obligations of" White and Kommer to plaintiffs.

(q) Paragraph 34 of the amended complaint differs from paragraph 27 of the original complaint in that where the original alleged that White and Kommer(relying on the "pretended" breaches to declare L.I.Reo in default)demande possession of the trucks and parts, demanded payment of all the "alleged" debt of L.I. Reo to White, and took steps to enforce the demands with the "result" that L.I. Reo went out of business, the new pleading instead alleges that White and Kommer took steps to cause L.I. Reo to close its doors, discontinue its business and go into dissolution and liquidation without the written consent of its stockholders (see paragraph (l)(ii) above, referring to new paragraph 25).

(r) Paragraph 35 of the amended complaint and paragraph 28 of the original complaint are identical.

(s) Paragraph 36 of the amended complaint adds to the "reliance" allegations of paragraph 29 a "reliance" on the "trust" arrangements of L.I. Reo and its stockholders with White and Kommer in the stockholders' expenditure of capital and effort in the business, and adds the names of Rummo and Haeger to those of Vincel, Tardo and Breen as ones who expended effort to build the L.I. Reo business.

(t) Paragraph 37 of the new pleading adds to paragraph 30 of the old the statement that White's and Kommer's acts (allegedly causing the L.I. Reo bankruptcy) were such that L.I. Reo was caused to be liquidated and dissolved without written stockholder consent (see paragraphs (q) and (l)(ii) above, both referring to new paragraph 25).

(u) Paragraphs 38 of the new and 31 of the old pleading both allege that plaintiffs as "holders of 100% of the stock of L.I. Reo" "have been directly damaged by the destruction" of L.I. Reo. The old pleading rested on the destruction and bankruptcy allegedly "carried out by ... White ... and Kommer." The new pleading adds to

"destruction" the "liquidation and dissolution of L.I.Reo."

In two new sentences added to paragraph 38 it is alleged

(i) that Vincel, Tardo and Breen as officers of L.I.Reo have been directly damaged by the destruction etc., and
(ii) that Vincel, Tardo, Breen, Rummo, Hoeger and Aiello as employees of L.I. Reo have been directly damaged by the destruction etc. The new version, in paragraph 38, omits reference to bankruptcy.

(v) Paragraph 32 of the old pleading (alleging acts in New York) is omitted.

(w) Paragraph 33 of the old and 39 of the new pleading are identical and charge the acts of White and Kommer were "in breach of the contractual relationship ... between plaintiffs" (or their predecessors in interest) and the defendants.

SECOND COUNT

The old pleading alleged that White and Kommer had assumed fiduciary obligations to the shareholders of L.I. Reo to act in L.I. Reo's best interests and those of its shareholders in controlling and managing L.I. Reo. The

new pleading alleges that White and Kommer assumed fiduciary obligations to Vincel, Tardo and Breen "and indirectly to the other plaintiffs" to act in L.I. Reo's best interests in managing and controlling it, and adds "and not to cause the liquidation or dissolution of L.I. Reo without ... the ... written consent" of Vincel, the Tardos and the Breens. The earlier pleading then charged breach of fiduciary duty, action against L.I. Reo's interests, subordination of the interests of L.I. Reo and its stockholders to those of White and Kommer, and acts detrimental to L.I. Reo that amounted to willful misfeasance and gross negligence. The new pleading instead alleges breach of fiduciary duty, self-interested and bad faith action against L.I. Reo's interests and plaintiffs', and liquidating and dissolving L.I. Reo without plaintiffs' consent. Then is added to the charge of willful misfeasance and gross negligence "as those terms are used in the Voting Trust Agreement."

THIRD COUNT

The third count, as phrased in the new pleading, differs from the original third count thus:

Old paragraph 40 asserted that the shareholders of L.I. Reo and L.I. Reo entered into "said agreements" as a result of intimidation, duress and coercion exercised by White and Kommer in their threat that otherwise they would cancel the L.I. Reo franchise, put it out of business and cause criminal proceedings to be brought against L.I. Reo's officers, and that neither L.I. Reo nor its shareholders would have executed the agreements but for the intimidation, duress, and coercion. The new paragraph 46 alleges that L.I. Reo, Vincel, the Tardos, and the Breens (not all shareholders) executed (specifically) the Financing Agreement and Voting Trust Agreement as a result of White's and Kommer's intimidation, duress and coercion in their threat that otherwise they would cancel the L.I. Reo franchise, put L.I. Reo out of business, cause criminal proceedings to be brought against L.I. Reo's officers, and that but for the intimidation, duress and coercion neither L.I. Reo nor Vincel, the Tardos and the Breens would have executed those agreements.

Old paragraph 41 alleged that the agreements were extremely onerous in terms and that White and Kommer

designed the agreements to enable them to acquire domination and control over L.I. Reo and its financial affairs, to destroy the working capital and acquire the assets of L.I. Reo, to drive L.I. Reo out of business, and to injure L.I. Reo's shareholders. New paragraph 47 alters the concluding language of the paragraph by substituting (after "drive L.I. Reo out of business") for "and to injure L.I. Reo's shareholders" the new language "to cause L.I. Reo to be liquidated and dissolved; and to injure the plaintiffs."

Paragraphs 43 (old) and 49 (new), alleging that defendants' acts were willful and malicious and done with intent to injure and harm L.I. Reo's shareholders, differ in that the new paragraph (49) adds after "shareholders" the words "officers and employers."

FOURTH COUNT

Count 4 is identical in both complaints except for subparagraph (j) of paragraph 52, which differs from subparagraph (j) of paragraph 46 in that the new subparagraph alleges that the acts complained of drove L.I. Reo out of business and caused it to be liquidated and dis-

solved, whereas the old complaint alleged that the acts complained of forced L.I. Reo into bankruptcy and drove it out of business.

FIFTH COUNT

The amended complaint makes no change in the original pleading.

SIXTH COUNT

The amended complaint makes no change in the original pleading.

The proposed amended complaint would introduce the ideas -

that the officers and the employers of L.I. Reo who were also stockholders did not suffer a damage from White's and Kommer's alleged misconduct that was proportioned to their stockholdings, since their employee interest was also damaged (hence the omission of the second paragraph of old paragraph 3);

that the provision in Section 4 of the voting trust agreement respecting "Dissolution, etc." has special relevance to plaintiffs' theory of individual rights: Section 4 reads:

"The Trustee [Kommer] agrees that during the term of this Agreement he will not cause any of the corporations to be dissolved or totally or partially liquidated without having received the prior written consent of the signatories. In the event of the dissolution or total or partial liquidation of any of the corporations, whether voluntary or involuntary, the Trustee shall receive the monies, securities, rights, or property to which the signatories are entitled, and shall distribute the same among the registered holders of Voting Trust Certificates in proportion to their respective interests therein as shown on the books of the Trustee, and upon such distribution all further obligations of liability of the Trustee in respect of such monies, securities, rights or property so received shall cease";

that the provision in Section 14 of the Voting Trust Agreement ("No Liability") has special relevance to plaintiff's theory of individual rights because of its reference to Trustee liability for his "willful misfeasance or gross negligence"; Section 14 reads:

"14. No Liability. Neither the Trustee, any person employed pursuant to paragraph 8 of this Agreement [i.e., Antelis], nor his respective successors shall be liable by reason of any matter or thing in any way arising out of or in relation to this Agreement except for such loss or damage as the Voting Trust Certificate holders may suffer by reason of his willful misfeasance or gross negligence and no Trustee acting hereunder shall

be required to give a bond or other security for the faithful performance of his duties as such."

The new allegations do not advance any allegations of fact not implicit in the original complaint.

The allegations that defendants caused the dissolution and liquidation and the reference to Section 4 of the Voting Trust Agreement add nothing. Since it is undeniable that, as Mr. Vincel explains in his answering affidavit paragraph 39, L.I. Reo filed a petition of voluntary bankruptcy on December 21, 1967, after the termination of the Voting Trust (see Memorandum of August 2, 1972, p. 20), Section 4 of the Voting Trust Agreement is not relevant to plaintiffs' claims. It self-evidently means that the Voting Trustee will not without written consent of the depositing stockholders use his right to vote the deposited stock to bring about the dissolution of the corporation or a distribution of its assets to its stockholders by voting a complete or partial liquidation. That is made clear by the second sentence of Section 4 which assumes that in any such dissolution or complete

or partial liquidation as Section 4 deals with the Voting Trustee as record owner of the stock would receive the corporate assets of which, of course, the Voting Trust Certificate holders would be the beneficial owners.

Section 4, that is, simply sets forth a restriction on the Voting Trustee's right to vote the stock of which he was by record owner; that right is broadly given/Section 6.

(Parenthetically, in Section 10 of the Voting Trust Agreement, the shareholders signing the agreement or later consenting to it agreed that during the term of the agreement they would not take any steps to file a petition in bankruptcy "against" L.I. Reo or a petition to request any court to take any other action for the relief of debtors or benefit of creditors.)

It does not appear that Kommer as Trustee had any occasion to or did vote the stock of L.I. Reo.

The explicit reference to the willful misfeasance and gross negligence language of Section 14 of the Voting Trust Agreement adds nothing to the original complaint. Paragraph 37 of the original complaint alleged willful

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misfeasance and gross negligence, as does paragraph 43 of the new complaint, which then adds "as those terms are used in the Voting Trust Agreement." But in any event Section 14 of the Agreement does not supply a basis of liability: it is an exculpatory clause, and it halts its exculpation, as is usual, short of "willful misfeasance or gross negligence." Section 14 operates where, independent of it, a liability on the Trustee's part would exist, and it exculpates the Trustee - unless he has been willfully misfeasant or grossly negligent. But the foundation of the Trustee's liability must be found elsewhere, not in Section 14.

1. The motion to amend the complaint may properly be granted, if counsel wish it, and believe that it clarifies the complaint. However, the meaning of the original complaint was not misunderstood as plaintiffs assume at page 15 of their Memorandum in Support of Plaintiffs' Motion to Permit Service of an Amended Complaint. Analysis by plaintiffs' of plaintiffs' example at pages 8-9 of their Memorandum might make clear to plaintiffs the defect in their theory of action and the reason for suggesting that, if Kommer or White caused Mr. Vincel to be falsely

arrested or maliciously prosecuted Mr. Vincel, that matter would have to be separately examined.

2. The plaintiffs add to the original complaint the idea that there would be a direct responsibility on the part of White and Kommer to those of the plaintiffs who were salaried employees of L.I. Reo. But if White and Kommer are not liable to them as stockholders qua stockholders - their only arguably meaningful contractual or trust relationship with White and Kommer under the November 23, 1966, agreement and the Voting Trust Agreement - they can scarcely be liable to them as being salaried employees in respect of their salary interest. Nothing in either agreement bears on the subject in any way.

For the rest, plaintiffs simply reargue the points covered in the Memorandum of August 2, 1972. As noted above, what is argued from Sections 4 and 14 of the Voting Trust Agreement is wide of the mark. No one dissolved or liquidated the L.I. Reo during the existence of the voting trust through exercise of voting control or, indeed, in any way, just as it cannot be said that plaintiffs violated Section 10 in putting L.I. Reo into bankruptcy.

Plaintiffs' claim is that what White and Kommer did ruined L.I. Reo and drove it to seek refuge in the bankruptcy court and, in that sense, caused a liquidation of certain of its assets - those in which it had or claimed chattel lien interests or interests acquired by judicial attachment; it is not claimed that Kommer voted to dissolve the corporation, or voted partial or complete liquidating dividends, the only means by which Kommer, qua trustee, could dissolve L.I. Reo or partially or completely liquidate it without dissolving it.

Similarly the misfeasance and negligence language of Section 14 is not the generating source of rights in plaintiffs or in L.I. Reo. In the first place Section 14 could not exculpate Kommer except for his misconduct as trustee, and no breach of a specific trustee duty is charged. Rather, Kommer's alleged misdeeds were as an oppressive creditor, and as a conspirator with White (his employer), not because at any stockholders' meetings he cast votes that he knew would injure an individual interest of the stockholders, as by voting to issue enough stock to reduce the depositing stockholders to a minority, or

by selling the deposited shares to a purchaser for value without notice.

The critical and irremediable defect remains the inescapable nature of the alleged wrong and damage. The alleged wrongful acts were related to the conduct of the L.I.Reo business, allegedly ruined that business, and only in that way damaged plaintiffs through their ownership interests in the business. The breaches of duty alleged are not breaches of any duties undertaken in either of the agreements relied upon but allegedly rapacious acts as a creditor insisting on the letter of its bond and taking advantage of non-existent or insubstantial defaults.

The claims sued upon are very plainly precisely those which the trustee in bankruptcy asserted against and White and Kommer/settled, as all agree, on very substantial terms pursuant to order of the Referee in Bankruptcy of August 27, 1968, and the supplementary agreement of September 23, 1968, approved by the Referee on October 3, 1968, the Referee's Order of August 28, 1968, authorizing the Trustee to appear in and join in causing to be dismissed with prejudice the state court action

and counterclaims New York County Supreme Court Index No. 14135 of 1967) and the stipulation for mutual dismissals with prejudice dated September 25, 1968. Clearly, the settlement and discontinuance preserved the rights of White against Mr. Vincel and of Mr. Vincel against White and Kommer. The most evident alleged right that it may be inferred that White sought to preserve against Mr. Vincel is the right relied on in White's First Counterclaim (see par. 48). What rights Mr. Vincel meant to reserve is not clear, but no doubt would include any arising out of the transactions giving rise to White's alleged right against him. But the controlling circumstance is that White could not again assert rights against L.I. Reo or its trustee in bankruptcy nor could Mr. Vincel assert, ~~XXXXXXXXXX~~ in his rights of own or any other name, the/L.I. Reo or the creditors of L.I. Reo, for the Trustee in Bankruptcy had settled their claims on notice to and over the objection of Mr. Vincel after hearing and with the approval of the bankruptcy judge. The Trustee's rights of suit embraced the totality of the damaging wrongs allegedly inflicted on L.I. Reo by White and Kommer, and by the settlement the Trustee reduced

those claims to his possession and, under judicial supervision, released them wholly. Nothing of them remained for transfer to or survival to Mr. Vincel and his fellow-stockholders. See Bayliss v. Rood, 4th Cir. 1970, 424 F.2d 142, 146-147; Graybar Electric Co. v. Doley, 4th Cir. 1959, 273 F.2d 284, 292; Schmitt v. Jacobson, D.Mass. 1968, 294 F.Supp. 346, 348; Sephan v. Merchants' Collateral Corp., 1931, 256 N.Y. 418.

Plaintiffs' argument from Hamilton-Brown Shoe Co. v. Ben L. Berwald Shoe Co., 5th Cir. 1926, 10 F.2d 275, misapplies the case. Berwald Co. was adjudicated a bankrupt. Four creditors had earlier sued Ben Berwald and other "officers" of Berwald Co. on the theory that Berwald Co. was not a corporation at all, and that Ben Berwald and the officers were conducting business as partners.* After the bankruptcy, Ben Berwald offered to buy all the assets of the estate from the trustee for an amount equal to 55% of the unsecured creditors' claims in full settlement of all the trustee's claims against him and in settlement of all the creditors claims outside the bankruptcy against him personally and the other officers of Berwald Co.

personally. (See Berwald v. Hamilton-Brown Co., Tex. Civ.App. 1929, 22 S.W. 2d 760; Berwald v. Tweedie Footwear Corp., Tex.Civ.App. 1929, 22 S.W. 2d 763). The Courts below were prepared to approve the settlement (In re Ben L. Berwald Shoe Co., N.D.Tex. 1924 1 F.2d 494), but the Court of Appeals disapproved. The Court was clear that the compromise was good so far as it dealt with claims on which the trustee had the power to sue, including the power to recover of subscribing stockholders of Berwald Co. their unpaid subscriptions, and to set aside preferential transfers made by Berwald Co. But the Court considered that the bankruptcy court was powerless to coerce those creditors who asserted claims (although for the same sales of goods) outside the bankruptcy against Berwald and his associates personally to settle those claims as, in effect, a condition of participating in the payment into the estate. To illustrate its meaning the Court said (10 F.2d at 276) -

"It would never be contended by anyone that the trustee could compromise the claim of an individual creditor against a third person arising from his indorsement of the bankrupt's note. There is no difference in principle in the case presented."

I.e., in the present case, White's alleged claim of right to sue Mr. Vincel on his alleged personal guaranty of L.I. Reo's note indebtedness to White would have been regarded by the Fifth Circuit Court as a claim beyond the bankruptcy court's jurisdiction since that claim could not be filed in the bankruptcy case against L.I. Reo. Since in point of fact Berwald had made no offer except one that required the creditors to release their claims made outside the bankruptcy court against Berwald himself and not against the bankrupt, the Court of Appeals concluded that it could not excise that alien part of the Berwald proposal and approve the part that dealt with the creditors' claims against the bankrupt company**. While so narrow a view of Section 27 of the Bankruptcy Act of 1898 (11 U.S.C. § 50) had not earlier been taken (cf. Petition of Stuart, 6th Cir. 1921, 272 Fed. 938), for present purposes it is enough to note that the case does not signify that the trustee can not settle claims of and against the bankrupt and that such settlements are not final if approved by the bankruptcy court. Such a settlement concludes the assertion of the same claim for redress

of the same wrongs damaging the corporate business when the stockholders of the bankrupt seeks to assert in their own interest that same claim for the same damages inflicted on the bankrupt corporation, whether the stockholders simply mistakenly regard the corporate claim for damages as their own, or rely on a supposed undertaking with them by the alleged wrongdoers that the latter would not inflict those wrongs on the corporation. The claim satisfied by the trustee's settlement is the claim sought to be asserted in the present amended complaint for damage allegedly wrongfully inflicted on the corporate business by White and Kommer, and that claim can have but a single satisfaction, the one exacted by the trustee. To test by viewing the matter in reverse: if White and Kommer had sought to settle plaintiffs' ~~XXXXXX~~ present claim for the damages allegedly inflicted on L.I. Reo's business for an equally large payment made by White and Kommer directly to plaintiffs in the proportion of plaintiffs' interests in the L.I. Reo business (whether or not adjusted for employee-salary interests), that would not and could not have precluded the trustee from pursuing them [White and Kommer] on exactly the same claim to the

same settlement (or judgment) the trustee did achieve in 1968 without any credit allowed or allowable for any payments that they had made to the plaintiffs. The claim was the trustee's to the exclusion of the plaintiffs.

Plaintiffs argue that they may be regarded as "dealers" within 15 U.S.C. § 1221(c) and New York General Business Law § 197. Section 1221(c) defines "automobile dealer" in terms of the "business enterprise" "operating under the terms of a franchise and engaged in the sale or distribution of" motor vehicles. The Fifth and Sixth Counts treat - and correctly treat - L.I. Reo as the one having the franchise, as the one conducting the business enterprise.

Kavanagh v. Ford Motor Co., 7th Cir. 1965, 353 F.2d 710, does not contribute to plaintiffs' contention. The problem there was to identify the dealer where the complexity of the contracts produced a situation in which the nominal franchisee was a corporation financed by Ford and of which Ford owned all the voting stock. Kavanagh was bound under a separate "Dealer Development Contract" and was termed the Operator. Ford put up 4/5 of the money

capital of the nominal franchisee, and Ford had and was to continue to have all the voting power of that company until its entire capital interest was retired through preferred the application to ~~preferred~~ stock redemption of a fixed percentage of the annual profit on sales. There were in addition a sales agreement and a management agreement. The Court considered that if the nominal dealer was considered the dealer for purposes of 15 U.S.C. §§ 1221 et seq., Ford would itself control access to the statutory remedy and thus manifestly defeat the purpose and policy of the statute. For statutory purposes, Kavanagh himself was therefore considered the automobile dealer operating under the franchise. In the present case no identity problem exists, and, again, the trustee claimed \$3,000,000 of White and White and Kommer for the alleged conspiratorial acts which allegedly had the purpose (inter alia) of prematurely terminating the franchise to L.I. Reo, bringing about a cancellation of the franchise, and allegedly ended with the actual cancellation of the L.I. Reo franchise in bad faith.

York Chrysler-Plymouth, Inc. v. Chrysler Credit Corp.,

5th Cir. 1971, 447 F.2d 786, agreeing that (p. 790)

"The individuals would not come within the scope of the Act merely because they were the sole stockholders, officers and directors of the corporate franchise holder"

professed to follow Kavanagh on the ground that the agreement with Chrysler made the individuals essential to the operation of the dealership. No parallel to the present case is presented in the York Chrysler case. Lewis v. Chrysler Motors Corp., 8th Cir. 1972, 456 F.2d 605 (reversing E.D.Mo. 1971, 332 F.Supp. 1202), left open the question of the correctness of the Kavanagh analysis (456 F.2d at 606 fn. 2), and held that the complaint should not have been dismissed on the pleadings alone. The issue was whether there was as yet any franchise or just a probationary one year trial run, Lewis arguing that he, personally, had a dealer relation although he as yet had no equity in the dealership corporation, still controlled by Chrysler.

3. If plaintiffs had the right to lay hold of and to litigate the claims that make up their amended complaint, the parties in effect agree, as they must, that summary judgment could almost certainly not be granted. See Kommer affidavit filed May 9, 1973, pars. 2, 13. Steinberg

affidavit filed May 9, 1973, pars. 10, 11. That is true quite apart from any further exploration of the matter in the incomprehensible affidavit of May 27, 1968, of Albert Coppack. If, however, any real effort were made to order the documents and figures, the areas of genuine controversy would turn out to be surprizingly narrow, but enough would remain at issue to require a jury trial. But it is useful to note that the issues would very likely not be quite those suggested by the pleadings.

Plaintiffs aver that L.I. Reo's operations were profitable and its prospects excellent. The financial data produced, however, portray a contrary picture (see Memorandum of August 2, 1972, pp. 25-26). Gross sales were large, but over the period January 1, 1960, through September 30, 1966, there was no after-tax net income but an after-tax net loss. Save in one year, used truck sales showed a net loss and new truck sales in the last three years/"spreads" between cost and sales in the order of about 5% of sales (treating truck bodies as bought and sold at no spread). The widest "spreads" were shown in parts sales.

Mr. Vincel's affidavit makes it plain (pars.9-11)

that L.I. Reo was systematically "out of trust" and using the "float" produced by that circumstance to supply it with working capital that it could not obtain on its own credit (par. 13). Mr. Vincel candidly states that White agreed in 1962 to guaranty L.I. Reo's debts to C. I. T. (which financed L.I. Reo's purchases of trucks) as a means of supplying the working capital L.I. Reo then needed and did not have. He says now that he undertook with White to keep the "float" (that is the amount by which L.I. Reo would be out of trust) within \$100,000 and did so (par.10)*** - an agreement which it can not be supposed that C.I.T. assented to - and that when there was a change of personnel at White (par. 12) and Kommer in June 1966 insisted on ending the "float," Mr. Vincel undertook to do it over time and to do his best to obtain "additional" capital (par. 12). Failing to obtain capital, he says that he then asked White to furnish it on loans to L.I. Reo that he would guaranty (par. 13). Soon after - Mr. Vincel suspects on a precipitating tip from Kommer - C.I.T. discovered the out-of-trust condition, called on White's guaranty, and the set of events - so differently character-

ized by the parties - followed that produced the November 23, 1966, agreement and the Voting Trust.

Mr. Vincel's affidavit presents the story behind the amended complaint with a disenchanting candor that preserves only the amended complaint's array of harsh words at White's insistence in enacting the role of the undeniable creditor of a hopeless-overextended debtor.

Mr. Vincel's explanation of the difficulties with the parts financing (pars. 35-37) does not make it clear that White was not delaying consummation of a financing arranged by L.I. Reo on its own credit - using as security the unpaid-for parts inventory supplied by White. White was in addition asked to, and was, as time went by, increasingly reluctant, in effect, to guaranty the financing - the working capital loan - by agreeing in the event of L.I. Reo's default to take the parts back at book up to some certain figure that would satisfy the bank in so far as the repurchase agreement applied to L.I. Reo's inventory of new parts. Again Mr. Vincel accuses as a wrong White's failure to underwrite additional working capital for L.I. Reo - despite Kommer's best efforts of

persuasion exerted on his superiors, if the documents annexed as a partial answer (filed March 13, 1973) to plaintiffs' Interrogatories 12 and 13 are accepted at face value.

While it seems beside the point in light of the form taken by the amended complaint, the 1967 arrest episode, on which Mr. Vincel's recollection appears to have failed him (par. 41), was not in any sense White's doing but that of Tinker National Bank or Makransky. That appears from the July 29, 1971, testimony of Mr. Vincel in the case Tinker National Bank v. Long Island Reo Truck Co., Inc. etc., et al., excerpts from which are annexed to the Lawrence W. Boes affidavit filed May 9, 1973.

Finally, the situation of Antelis is illuminated by the communications furnished by plaintiffs' counsel. Certainly for some purposes Antelis was an employee of White, and it seems clear that his responsibilities within L.I. Reo were those of or in displacement of those of a general manager. Sections 8 and 15 of the Voting Trust Agreement come into play, but they do not dispositively answer the gravamen of the charges in the amended complaint,

paragraphs 28, 29 and 32. Sections 8 and 15 would not relieve Antelis of the duty to serve L.I. Reo faithfully; they would, rather, establish that dual employment would not of itself condemn Antelis's conduct or shift to White any burden of proof that it would not otherwise have to bear. Whether Antelis did or did not function as the equivalent of White's "regional manager" vis-a-vis L.I.Reo and within the meaning of paragraph 10 of the November 23, 1966, agreement is not determinable on the papers.

To repeat, were the issues that plaintiffs put forward germane to the present case, it would almost certainly be concluded that summary judgment could not be granted. But the issues "belonged" to L.I.Reo, related to alleged wrongs having their impact solely on its property and business, and were disposed of by its trustee in bankruptcy for a very substantial consideration.**** The issues were not in 1968 and are not now issues separately actionable between plaintiffs and White and Kommer, for they relate to alleged wrongs allegedly committed against L.I. Reo in respect of its business and property not to wrongs which could be framed as actionable wrongs against plaintiffs. The

- 420A

satisfaction exacted by the trustee was not "on account," but was, rather, a complete satisfaction of L.I. Reo's claims against White and Kommer.

4. Subject to any motion that either side may wish to make to withhold judgment on the complaint until the end of the whole case, it seems that a final judgment dismissing the complaint is now advisable. See Rule 54(b). If the present determination is incorrect, that should be determined through appeal before the counterclaims are considered, for a trial of the counterclaims/^{would}very probably involve evidence relevant to the amended complaint. If the present determination is correct, then it will be important to decide before trying the counterclaims whether or not, despite the form of the reply to the counterclaims, evidence relevant to the alleged facts set forth in paragraphs 46 and 47 of the amended complaint, would be receivable on a trial of the counterclaims.

In this perspective, there is no just reason for delay in entering a final judgment on the present decision.

It is, accordingly,

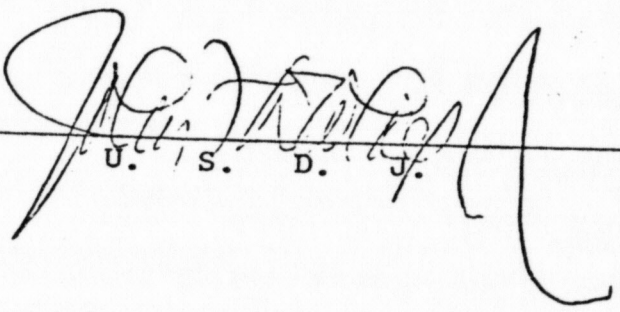
ORDERED that the plaintiffs' motion for leave to

file an amended complaint is granted; and it is further

ORDERED that defendants' motion for summary judgment dismissing plaintiffs' action against defendants is granted and the Clerk is expressly directed now to enter judgment that plaintiffs take nothing against defendants on the causes of action set forth in the complaint and amended complaint and that plaintiffs' action against defendants is dismissed on the merits.

Brooklyn, New York

August 23, 1974.


U. S. D. J.

Footnotes

* The complaint in the Texas state court failed on the merits, it seems, when the proofs showed that the sales were made and billed to the corporation (see Berwald v. Hamilton-Brown Shoe Co., Tex.Civ.App. 1929, 22 S.W.2d 760, 761).

** In the state court case the dissident creditors (Hamilton-Brown and Tweedie Footwear) amended to allege fraud claims against Berwald - alleging that the corporate charter was procured by fraudulently representing that \$10,000 had been paid into the corporation for its original issue stock when in fact nothing had been paid in, and that the dissident creditors made their sales to the corporation in reliance on its being a valid corporation with a true paid-in capital. Judgments for the dissident creditors were reversed for a new trial on a statute of limitations issue.

*** In paragraph 9 of the affidavit Mr. Vincel said that, "Dealers who float hold back payments to financing agencies on the sale of vehicles for a relatively short time after the due dates, in order to maintain a sufficient bank balance and to have working capital." In deposition testimony given in Tinker National Bank v. Long Island Reo Truck Co., Inc. etc. et al. on July 29, 1971, Mr. Vincel said (pp. 52-53),

Q I ask the question again; whether there was a practice in paying Universal C.I.T. and/or White Motor Corp. when there was a sale by Long Island Reo? ...

A We would, in this case, like most others, draw a check probably within one or two days.

* * *

Q And was Universal C.I.T. paid off within one or two days or was -- answer the question first; was Universal C.I.T. paid off?

A A check was drawn as is always the case. A check is drawn immediately or within one or two days and put with other checks and then it is given out at a propitious time. This one was not paid. You mean was the check sent to C.I.T? Was it paid through the bank? No, it was not. The check was issued.

Q What happened to the check?

A Well, the check was eventually destroyed because the White Motor Company came in and seized.

Q When did that happen?

A Approximately, two months later
or six weeks, six to eight weeks later.

**** In reply to the counterclaims of White against Mr. Vincel, including counting on the note of L.I. Reo dealt with in the November 23, 1966, agreement and that issued on February 20, 1967, and both allegedly guaranteed by Mr. Vincel, Mr. Vincel has pleaded the settlement with the trustee in bankruptcy as a complete defense. See reply pars. 25, 29, and 36-42.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- 424A

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ AUG 26 1974 ★

TIME A.M. _____
P.M. _____

-----x
THOMAS A. VINCEL, et al.,

Plaintiffs,

-against-

69C-753

WHITE MOTOR CORPORATION and
GLENN F. KOMMER,

M' FILMED

Defendants.
-----x

A memorandum and order of the Honorable John F. Dooling, Jr., United States District Judge, having been filed on August 23, 1974, the court having determined that there is no just reason to delay the entry of final judgment, the plaintiffs' motion to file an amended complaint is granted and defendants' motion for summary judgment is granted dismissing the plaintiffs' action and directing the Clerk to enter judgment, it is

ORDERED and ADJUDGED that the plaintiffs take nothing against the defendants on the causes of action set forth in the complaint and amended complaint and that the plaintiffs' action be dismissed on the merits.

Dated: Brooklyn, New York
August 24, 1974

Lewis Orgel
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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----- x
THOMAS A. VINCEL, GRACE VINCEL,
NUNO TARDO, IRENE TARDO, WILLIAM
BREEN, VIRGINIA BREEN, JOSEPH
RUMMO, ROLF HOEGER, M. D. AIELLO,
P.AIELLO, and LIRCO CREDIT CORP.,

69 Civil 753

Plaintiffs

NOTICE OF APPEAL

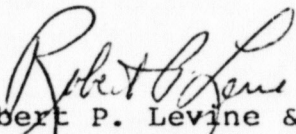
- against -

WHITE MOTOR CORPORATION and
GLENN F. KOMMER,

Defendants
----- x

Notice is hereby given that THOMAS A. VINCEL,
GRACE VINCEL, NUNO TARDO, IRENE TARDO, WILLIAM BREEN, VIRGINIA
BREEN, JOSEPH RUMMO, ROLF HOEGER, M. D. AIELLO, P. AIELLO,
and LIRCO CREDIT CORP., plaintiffs above named, hereby appeal
to the United States Court of Appeals for the Second Circuit
from the final judgment in this action dismissing plaintiffs'
action on the merits dated August 23, 1974 and entered on
August 26 1974.

September 19, 1974


Robert P. Levine & Myron S. Isaacs
Attorneys for Plaintiffs
99 Park Avenue
New York, New York 10016
Telephone: (212) 867-7200

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- 426A

THOMAS A. VINCEL, et al.,

Plaintiffs,

vs.

WHITE MOTOR CORPORATION and
GLENN F. KOMMER,

Defendants.

CIVIL ACTION
69 CIVIL 753

DEFENDANTS' LIMITED
INTERROGATORIES
PURSUANT TO
ORDER

PLEASE TAKE NOTICE that plaintiffs are required, pursuant to Order of Honorable John Dooley, United States District Judge, to immediately answer the following limited interrogatories under oath:

1. With respect to paragraph 25 of the complaint:

(a) State each act* by White Motor Corporation ("White") which it will be claimed was not in good faith.

(b) State each act by Glenn F. Kommer ("Kommer") which it will be claimed was not in good faith.

(c) State each act by White which it will be claimed was not in the best interests of each of:

(1) Long Island Diamond - Reo Truck Co., Inc.
("L. I. Reo")

(ii) the creditors of L. I. Reo

(iii) each individual stockholder of L. I. Reo, specifying the name of each individual stockholder who it will be claimed was affected.

(d) State each act by Kommer which it will be claimed was not in the best interests of each of:

(1) Long Island Diamond - Reo Truck Co., Inc.
("L. I. Reo")

(ii) the creditors of L. I. Reo

(iii) each individual stockholder of L. I. Reo, specifying the name of each individual stockholder who it will be claimed was affected.

* Where an "act" is referred to in any of the answers to these interrogatories, plaintiffs are required to state the date and place each such act took place and the person or persons who it is claimed did each such act.

- (c) Identify by date, signatories and number of pages each agreement referred to in this paragraph of the complaint which it is claimed that White claimed L. I. Reo had breached.
2. With respect to paragraph 26 of the complaint:
- (a) State each act by White which it is claimed that White claimed was a breach of White's agreements with L. I. Reo and state which agreement it is claimed White claimed was breached by each such act.
- (b) State each act by Kommer which it is claimed that White claimed was a breach of White's agreements with L. I. Reo and state which agreement it is claimed White claimed was breached by each such act.
- (c) State each act by Samuel Antelis which it is claimed that White claimed was a breach of White's agreements with L. I. Reo and state which agreement it is claimed White claimed was breached by each such act.
- (d) State when it is claimed that White determined that each of the acts referred to in answer to subparagraphs (a), (b) and (c) of this Interrogatory constituted breaches by L. I. Reo of its agreements with White.
3. With respect to paragraph 30 of the complaint:
- (a) State each act by White which it is claimed constituted wilful misfeasance.
- (b) State each act by Kommer which it is claimed constituted wilful misfeasance.
- (c) State each act by White which it is claimed constituted gross negligence.
- (d) State each act by Kommer which it is claimed constituted gross negligence.
4. With respect to paragraph 33 of the complaint:
- (a) Identify each contract referred to.
- (b) Specify by reference to each answer to the foregoing Interrogatories which acts were in breach of which contract.
- (c) State under which contracts each individual plaintiff claims he (she or it) had a contractual relationship with White.
- (d) State under which contracts each individual plaintiff claims he (she or it) had a contractual relationship with Kommer.
5. With respect to paragraph 37 of the complaint:
- (a) State each act by which it is claimed that White

- (i) breached fiduciary obligations
- (ii) acted in its own selfish interests
- (iii) acted in bad faith
- (iv) acted deliberately against the interests of L. I. Reo
- (v) acted deliberately against the interest of shareholders of L. I. Reo, specifying by name each shareholder who was affected
- (vi) subordinated the interests of L. I. Reo to its own interests
- (vii) subordinated the interests of L. I. Reo's shareholders to its own interests, specifying by name each shareholder whose interests were subordinated.

(b) State each act by which it is claimed that Kommer

- (i) breached fiduciary obligations
- (ii) acted in his own selfish interests
- (iii) acted in bad faith
- (iv) acted deliberately against the interests of L. I. Reo
- (v) acted deliberately against the interest of shareholders of L. I. Reo, specifying by name each shareholder who was affected
- (vi) subordinated the interest of L. I. Reo to his own interests
- (vii) subordinated the interests of L. I. Reo's shareholders to his own interests, specifying by name each shareholder whose interests were subordinated.

(c) State each act by White which it is claimed was detrimental to the interests of L. I. Reo's shareholders, specifying by name each such shareholder whose interests were affected.

(d) State each act by Kommer which it is claimed was detrimental to the interests of L. I. Reo's shareholders, specifying by name each such shareholder whose interests were affected.

(e) State each act by White which it is claimed was prejudicial to L. I. Reo's shareholders, specifying by name each such shareholder who was affected.

(f) State each act by Kommer which it is claimed was prejudicial to L. I. Reo's shareholders, specifying by name each such shareholder who was affected.

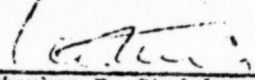
429A

6. With respect to paragraph 50 of the complaint:

- (a) State each act of coercion it is claimed was done by White to L. I. Rec.
- (b) State each act of coercion it is claimed was done by Kommer to L. I. Rec.
- (c) State each act of coercion it is claimed was done by White to L. I. Rec's shareholders, specifying by name each shareholder who it is claimed White coerced.
- (d) State each act of coercion it is claimed was done by Kommer to L. I. Rec's shareholders, specifying by name each shareholder who it is claimed Kommer coerced.
- (e) State each act of intimidation it is claimed was done by White to L. I. Rec.
- (f) State each act of intimidation it is claimed was done by Kommer to L. I. Rec.
- (g) State each act of intimidation it is claimed was done by White to L. I. Rec's shareholders, specifying by name each shareholder who it is claimed White intimidated.
- (h) State each act of intimidation it is claimed was done by Kommer to L. I. Rec's shareholders, specifying by name each shareholder who it is claimed Kommer intimidated.

Dated: August 8, 1969

Yours very truly,
REAVIS & McGRATH
ATTORNEYS FOR DEFENDANTS

By 
Stephen R. Steinberg,
a member
1 Chase Manhattan Plaza
New York, N. Y.

To: Messrs. Hellerstein, Rosier & Rombur
ATTORNEYS FOR PLAINTIFFS
19 West 44th Street
New York, N. Y. 10036

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

430A

THOMAS A. VINCEL, et al.,

CIVIL ACTION
69 CIVIL 753

Plaintiffs

- against -

PLAINTIFFS' ANSWERS
TO DEFENDANTS'
INTERROGATORIES

WHITE MOTOR CORPORATION and
GLENN F. KOMMER,

Defendants

Plaintiffs answering defendants' limited interrogator-
ies state:

1. With respect to paragraph 25 of the complaint

(a) & (b). Plaintiffs claim that the following acts of
White and Kommer were not in good faith:

I. In or about November 1966 White appointed
Kommer as trustee for the stockholders of L. I. Reo, and Kommer
assumed the powers and duties of the trustee, both White and
Kommer knowing that Kommer's position as an employee and officer
of White would conflict with his obligations to the stockholders
of L. I. Reo, and both intending to subordinate the interests of
the stockholders of L. I. Reo to the interests of White.

II. In or about February 1967, White and Kommer
selected and forced the appointment of Samuel Antelis as general
manager of L. I. Reo, both knowing that Antelis had no experience
in the truck industry nor in any business related to the business
of L. I. Reo and that he was not qualified for the position, both
knowing and intending that Antelis would subordinate the interests
of L. I. Reo to the interests of White, and both violating by
said appointment their commitment to L. I. Reo and to its stock-

they would appoint a man experienced in a business similar to the business of L. I. Reo and qualified to be the general manager of L. I. Reo.

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III. Between November 1966 and August 1967, inclusive, White and Kommer refused to honor valid warranty claims upon trucks repaired and serviced by L. I. Reo, thus causing a drain on L. I. Reo's cash, by:

- (a) disallowing valid claims either fully or partially,
- (b) allowing claims but failing to credit L. I. Reo's account for the proper amounts,
- (c) refusing to pay cash for warranty work done on trucks sold directly from the factory and by other Diamond-Reo dealers,
- (d) requiring L. I. Reo to pay C. O. D. for parts to correct mis-manufactured parts in new vehicles,
- (e) threatening to cancel L. I. Reo's franchise if it refused to do warranty work on Diamond-Reo trucks that had not been sold by L. I. Reo

IV. Between November 1966 and August 1967, inclusive, White and Kommer required L. I. Reo to pay C. O. D. for all parts orders, prior to inspecting the contents of said orders. Defective and incorrect parts were returned to White, and L. I. Reo received a credit. The cash payment was not refunded. The aforesaid C. O. D. requirement was a further drain on L. I. Reo's cash.

V. Between November 1966 and August 1967, inclusive, White and Kommer refused to give L. I. Reo the normal, routine usual and ordinary customer assistance given by White to other Diamond-Reo and White dealers.

VI. Between November 1966 and August 1967, inclusive, Kommer and other White executives concerned with L. I. Reo deliberately avoided contact and communication with any L. I. Reo employee or officer so that the normal routine, usual and ordinary relationship between manufacturer and dealer was impaired, all to L. I. Reo's detriment.

VII. Between November 1966 and August 1967, inclusive, Kommer and White made pedigree information on L. I. Reo trucks available to competing White dealers and reduced L. I. Reo's service business.

VIII. Between November 1966 and August 1967, inclusive, Kommer and White, through direct sales from factory to customer at discounts, pirated customers from L. I. Reo and reduced L. I. Reo's sales. Complaints by L. I. Reo were met with threats of franchise cancellation.

IX. From the appointment of Samuel Antelis as general manager of L. I. Reo in February 1967 to and including August 1967, White and Kommer through their agent, Antelis, caused L. I. Reo to overdraw its bank accounts, to incur penalties for failure to pay federal taxes, to pay certain creditors of L. I. Reo sums in excess of the amounts actually due to said creditors, and otherwise allocated funds of L. I. Reo improperly so as to prevent L. I. Reo from meeting its contractual obligations to White, to other creditors of L. I. Reo, and to customers of L. I. Reo and so as to impair and destroy the cash position of L. I. Reo.

X. Between March 1967 and July 1967, inclusive, White and Kommer sabotaged and destroyed a parts inventory warehouse receipts program of L. I. Reo formulated by plaintiffs,

Vincel, Tardo and Breen, pursuant to the agreement dated **433A** November 23, 1966 among White, L. I. Reo and plaintiffs, Vincel, Tardo and Breen, (Exhibit "A" to the complaint herein), after that program had been approved by the warehouse company and the financial institution concerned therewith. Said parts inventory warehouse receipts program was designed to solve and would have solved the cash problem of L. I. Reo. It required White pursuant to White's commitments set forth in paragraph 7 of said agreement, to release its security interest in the parts inventory of L. I. Reo and to execute documents required by said financial institution. White and Kommer failed and refused to release such security interest and to execute such documents, in violation of said agreement.

XI. Between April 1967 and August 1967, inclusive, White and Kommer, in violation of their agreement and their practice, prior to April 1967 required L. I. Reo to pay by certified checks for all parts picked up by L. I. Reo from White's Newark warehouse, intending to prevent and preventing L. I. Reo from effectively operating its service department.

XII. During the month of April 1967, White and Kommer failed and refused to pay over to L. I. Reo the proceeds (approximately \$4,000) of insurance on a stolen truck owned by L. I. Reo, said proceeds having been received by White, belonging to L. I. Reo, and needed by L. I. Reo to meet its obligations to creditors and customers.

XIII. In August and September 1967, White and Kommer placed armed guards upon L. I. Reo's premises, threatened plaintiff Vincel with arrest and commenced an action in the New York Supreme Court by White, first against L. I. Reo and then

against L. I. Reo and Vincel, based on claims of breaches of agreements by L. I. Reo and conversion of motor vehicles by 434A L. I. Reo, allegedly committed at times when L. I. Reo was controlled by White and Kommer and managed by their agent, Antelis. In said action, White and Kommer attached and caused to be attached the motor vehicles, parts and bank accounts of L. I. Reo and forced L. I. Reo to close its doors, discontinue its business and file a petition in bankruptcy.

XIV. In September 1967, White and Kommer improperly and illegally refused to release monies from the bank accounts of L. I. Reo so attached, and thereby caused the arrest of plaintiff Vincel.

XV. At a time commencing prior to November 1966 and continuing to the present, White and Kommer and the officers, employees, and representatives of White conspired to combine White's major truck divisions and to drive out of business the largest dealers, including L. I. Reo, selling only Diamond T or Reo or Diamond Reo trucks so as to circumvent White's contractual and fiduciary obligations to L. I. Reo and its stockholders.

(c) & (d). Plaintiffs claim that each of the acts of White and Kommer set forth in the answer to items (a) & (b), above, was not in the best interest of L. I. Reo, its creditors, or its stockholders, and that each individual stockholder of L. I. Reo named as a plaintiff in this action was affected by each of said acts.

(e). Plaintiffs claim that the agreements, breaches of which were claimed by White, were specified by White in its complaint and amended complaint in the Supreme Court action

mentioned above and are as follows:

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I. Agreement for wholesale financing, dated August 28, 1964, (Exhibit "A" to the amended complaint therein).

II. Agreement dated November 23, 1966, (Exhibit "E" to the amended complaint therein).

III. Promissory note in the sum of \$195,837.57, (Exhibit "F" to the amended complaint therein).

IV. Security agreement dated February 21, 1967, (Exhibit "G" to the amended complaint therein).

V. Consignment agreement dated February 21, 1967, (Exhibit "H" to the amended complaint therein).

VI. Promissory note in the sum of \$42,739.56, (Exhibit "I" to the amended complaint therein).

VII. Promissory note executed on or about August 28, 1965 (said note referred to in paragraph 20 of the amended complaint).

The dates, signatories and number of pages of the agreements referred to above are as set forth in the aforesaid amended complaint and the exhibits thereto.

2. With respect to paragraph 26 of the complaint

(a), (b) & (c). Plaintiffs claim that White claimed that the following acts by Kommer, White and Antelis, as set forth in the complaint and amended complaint in the Supreme Court action mentioned above, were a breach of the agreements between White and L. I. Reo:

I. L. I. Reo had defaulted in payments pursuant to the financing agreement dated August 28, 1964 and was indebted to White in the sum of \$113,243.46.

II. L. I. Reo had failed to pay \$110,294.15 due on the promissory note dated November 23, 1966 in the sum of \$195,837.57.

III. L. I. Reo had failed to give possession of numerous motor vehicles to White pursuant to the security agreement dated February 21, 1967, the consignment agreement dated February 21, 1967, the agreement dated November 23, 1966 and the aforesaid promissory note dated November 23, 1966.

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IV. L. I. Reo failed to pay the sum due on a promissory note dated February 20, 1967, in the sum of \$42,739.56.

V. L. I. Reo fraudulently converted six motor vehicles owned by White.

VI. L. I. Reo failed to pay the balance due on a promissory note dated August 28, 1965.

(d). Plaintiffs claim that White determined to make the aforesaid claims at some time unknown to plaintiffs, between November, 1966 and August, 1967, inclusive.

3. With respect to paragraph 30 of the complaint

(a), (b), (c) & (d). Each of the acts set forth in the answers to items 1 (a) & (b), above, constitutes willful misfeasance and gross negligence by White and Kommer.

4. With respect to paragraph 33 of the complaint

(a). The contractual relationship between plaintiffs or their predecessors in interest and the defendants is evidenced by the following:

I. Agreement dated November 23, 1966, annexed to the complaint herein as Exhibit "A".

II. Agreement dated December 29, 1966, annexed to the complaint herein as Exhibit "B".

III. The franchise agreements between L. I. Reo and White.

(b). Each of the acts set forth in the answer to items 1 (a) & (b), above, breached each of said contracts.

(c) & (d). Each of the plaintiffs named herein had a contractual relationship with White and Kommer pursuant to the

contracts set forth in the answer to item 4 (a), above.

5. With respect to paragraph 37 of the complaint - 438A

(a) & (b). Plaintiffs claim that White and Kommer breached fiduciary obligations, acted in their own selfish interests, acted in bad faith, acted deliberately against the interests of L. I. Reo, acted deliberately against the interest of shareholders of L. I. Reo, subordinated the interests of L. I. Reo to their own interests, subordinated the interests of L. I. Reo's shareholders to their own interests by committing each of the acts set forth in the answer to items 1 (a) & (b), above.

The shareholders whose interests were affected and subordinated are the plaintiffs named herein.

(c), (d), (e) & (f). Plaintiffs claim that each of the acts by White and Kommer set forth in the answer to items 1 (a) & (b), above, were detrimental to the interests of L. I. Reo's shareholders and prejudicial to L. I. Reo's shareholders.

The shareholders whose interests were affected are the plaintiffs named herein.

6. With respect to paragraph 50 of the complaint

(a), (b), (c), (d), (e), (f), (g) & (h). Plaintiffs claim that the following acts by White and Kommer coerced and intimidated L. I. Reo and L. I. Reo's shareholders:

I. In November 1966 prior to negotiating the agreement of November 23, 1966, White and Kommer placed armed guards upon the premises of L. I. Reo and seized the records, checkbooks and cash boxes of L. I. Reo.

II. In November 1966, prior to negotiating the

agreement of November 23, 1966, White and Kommer threatened Thomas A. Vincel and Nuno Tardo with arrest unless they executed the aforesaid agreement with the mutual releases contained therein.

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III. The acts set forth in the answer to items 1 (a) & (b), above.

The shareholders who were coerced and intimidated are the plaintiffs named herein.

Dated: New York, New York
September 17, 1969

Hellerstein, Rosier & Rembar
Attorneys for Plaintiffs

by: S/ MYRON S. ISAACS

STATE OF NEW YORK)
COUNTY OF NEW YORK } ss:

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THOMAS A. VINCEL, being duly sworn deposes and says that he is one of the plaintiffs in the within entitled action; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be upon information and belief, and that to those matters he believes it to be true.

s/
Thomas A. Vincel

Sworn to before me this
18th day of September, 1969

ROBERT P. LEVINE
Notary Public, State of New York
No. 697517755
Qualified in Westchester County
Term Expires March 30, 1970

- 441A -

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THOMAS A. VINCEL, et al.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	69 Civil 753
	:	
WHITE MOTOR CORPORATION and	:	
GLENN F. KOMMER,	:	
	:	
Defendants.	:	
	:	

PLEASE TAKE NOTICE that pursuant to Rule 33 of the F.R.C.P. plaintiffs are required to answer the following interrogatories under oath:

1. With respect to the ownership by plaintiffs of the securities of Long Island Diamond Reo Truck Co., Inc. ("L. I. Reo"):

(a) state each date each plaintiff purchased or received stock in L. I. Reo;

(b) the amount each plaintiff paid to L. I. Reo for each such receipt or purchase of stock;

(c) the date of each payment;

(d) the person or entity such stock was purchased or received from;

(Interrogatory # 1 of defendants' interrogatories dated November 28, 1969)

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(e) state whether any plaintiff sold, transferred, pledged or encumbered any L. I. Reo stock;

(f) if the answer to subparagraph "e", above, is in the affirmative, state:

(i) with whom was each such transaction;

(ii) the date of each such transaction;

(iii) a description of each such transaction;

(iv) the amount of money involved in each

such transaction;

(v) if a pledge or encumbrance, state:

(a) the amount secured;

(b) whether the amount was repaid
in whole or in part and when

(g) state who plaintiffs' predecessors in interest were, as described in paragraph 2 of the complaint;

(h) state the date each plaintiff was issued each share of stock (Class A or B) which it is alleged he or she owned

(i) describe the rights and preferences of the Class A stock as to voting, dividends, liquidation, distribution, preferences;* and

(j) describe the rights and preferences of the Class B stock as to voting, dividends, liquidations, distribution preferences.*

* In lieu of such description, plaintiffs may attach copies of applicable portions of L. I. Reo's Certificate of Incorporation or other document stating the rights and preferences.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

443A

THOMAS A. VINCEL, et al.,

Plaintiffs

- against -

69 Civil 753

WHITE MOTOR CORPORATION and
GLENN F. KOMMER,

Defendants

Plaintiffs answering defendants' interrogatories

state:

1. (a), (b), (c), (d),
(e), (f), (g), Stock holdings in L. I. Reo
& (h).
from 1961 - 1970

ORIGINAL ISSUE

Certificate #1 - Thomas A. Vincel - 26.2 shares - 1/2/61
(Paid \$26,200 [partnership contribution]
in 3/1959)

Certificate #2 - Henry R. Lanz - 10 shares - 1/2/61
(Paid \$10,000 [partnership contribution]
on 7/30/59)

Certificate #3 - Nuno Tardo - 5 shares - 1/2/61
(Paid \$5,000 [partnership contribution]
in 4/1959)

Certificate #4 - Thomas A. Vincel - 16 shares - 1/29/62
(Paid \$15,000 [paid on 2/15/62. Vincel
borrowed sum from First National City
Bank. L. I. Reo repaid loan and stock
was returned to Treasury])

A & B STOCKS

	<u>Shares</u>
A1 - 6/1/63 - Thomas A. Vincel - Replaced Original Certificate #1 dated 1/2/61	26.2
A2 - 6/1/63 - Henry R. Lanz - Replaced Original Certificate #2 dated 1/2/61	10.
A3 - 6/1/63 - Nuno Tardo - Replaced Original Certificate #3 dated 1/2/61	5.

(Plaintiffs' answer #1 to defendants
interrogatories dated March 4, 1970.
including Exhibits A & B thereto)

444A

A & B STOCKS

Shares

A4*	-	6/1/63	-	Leon Maganza	)	Consideration for	5.
					)	acquisition of	
A5	-	6/1/63	-	William E. Breen	)	Suburban Autom-	5.
					)	tive Service, Inc.	
						8/1/62 Agreement	
A6	-	4/1/66	-	Joseph Rumme	-	Paid \$2000 4/11/66	2.
A7	-	6/13/66	-	Rolf Hoeger	-	Paid \$1000 5/17/66	1.
A8	-	10/5/66	-	Thomas A. Vineel	-	Purchased 1/3 of	3.33
						H. Lanz Shares for \$1856.40	
						(paid during prior 3 year	
						period)	
A9	-	10/5/66	-	Nuno Tardo	-	" " " "	3.33
A10	-	10/5/66	-	William E. Breen	-	" " " "	3.33
B1*	-	6/1/63	-	Leon Maganza	)	Consideration for	2.
					)	acquisition of	
B2	-	6/1/63	-	William E. Breen	)	Suburban Autom-	2.
					)	tive Service, Inc.	
						8/1/62 Agreement	
B3	-	6/30/64	-	Thomas A. Vineel	-	Pd. \$4000 11/27/63	4.
B4	-	6/30/64	-	Nuno Tardo	-	Pd. \$5000 12/9/63	5.
B5	-	9/28/64	-	Thomas A. Vineel	-	Pd. \$3000 9/29/64	3.
B6	-	9/27/65	-	Thomas A. Vineel	-	Pd. \$3000 9/27/65	3.

Note - Certificate A4 and B1 purchased from Leon Maganza by Lirco Credit Corp. in January 1969 for \$3000. Certificate B1 has not been re-issued to reflect 3 for 1 stock split.

SPLIT OF B STOCK 3 FOR 1

B7	-	2/25/66	-	Thomas A. Vineel	-	Re-issue for	
						Certificates B3, B5, B6	30.
B8	-	2/25/66	-	Nuno Tardo	-	Re-issue for	
						Certificate B4	15.
B9	-	2/25/66	-	William E. Breen	-	Re-issue for	
						Certificate B2	6.

SUBSEQUENT ISSUES OF B STOCK

B10	-	8/30/66	-	Mamie C. and Patsy Aiello	-	Paid	
						\$2,000 9/2/66	2.

- 445A

SUBSEQUENT ISSUES OF B STOCK

Shares

B11	-	11/23/66	Virginia Breen - Paid \$1,000, 11/15/66	1.
B12	-	11/23/66	Irene Tardo - Paid \$1,000, 11/15/66	1.
B13	-	11/23/66	Grace Vincel - Paid \$1,000, 11/15/66	1.

Note: The aforesaid lists all sales, pledges or encumbrances except for the transfer of stock to the Voting Trustee

(i) See attached Exhibit A

(j) See attached Exhibit B

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EXHIBIT A

Rights and Preferences of Class A Stock

447A

COPY OF CERTIFICATE OF INCORPORATION
(ATTACHED HERETO)

Third:—The amount of the capital stock shall be

The shares of stock of the corporation shall be without par value.
The total number of shares of the corporation shall be one hundred,
all of which shall be without par value.

The capital of the corporation shall be at least equal to the sum
of the aggregate par value of all issued shares having par value, plus
the aggregate amounts of consideration received by the corporation for
the issuance of shares without par value, plus such amounts as from
time to time, by resolution of the board of directors, may be transferred
thereto.

448A

EXHIBIT B

Rights & Preferences of Class B Stock

CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION
OF LONG ISLAND REO TRUCK CO., INC., PURSUANT TO SECTION
36 OF THE STOCK CORPORATION LAW

We, THOMAS A. VENCEL and NUNO TARDO, being respectively the President and the Secretary of Long Island Reo Truck Co. Inc., do hereby certify:

1. The name of this corporation is Long Island Reo Truck Co., Inc.

2. The certificate of incorporation was filed in the Office of the Secretary of the State of New York on November 3rd, 1960.

3. The certificate of incorporation is amended, and more particularly Paragraph "Third" thereof, to effect a change and increase in the shares of stock which the corporation shall be authorized to issue, to provide for two classes of stock, to be known as "Class A" stock and "Class B" stock, and to provide for special designations, privileges, powers, restrictions or qualifications of said classes of stock as hereinafter provided.

4. The total number of shares which the corporation is already authorized to issue is 100 shares, all of which are without par value, and all of which are of the same class.

5. The number of shares of stock issued and outstanding is 57.2 shares.

6. The total number of shares and the classes of stock which the corporation may henceforth have and issue shall be One Hundred (100) shares of "Class A" stock without par value, which shall replace the shares which the corporation is already authorized to issue, and One Hundred (100) shares of "Class B" stock without par value.

7. The designations, privileges and voting powers of the shares of each class, and the restrictions or qualifica-

tions thereof are:

450A

(a) All dividends declared by the corporation shall be distributed among the holders of all the shares of stock in proportion to their holdings, regardless of class.

(b) In the event of the dissolution or liquidation of the corporation or upon any distribution of its capital, the assets and funds of the corporation shall be divided and distributed among the holders of all the shares of stock in proportion to their holdings, regardless of class.

(c) All voting rights shall be exercised by the holders of the "Class A" stock, exclusively.

(d) The holders of the "Class B" stock shall not have any voting rights, and are and shall be specifically excluded from the right to vote in a proceeding:

1) for the mortgaging of the property and franchises of the corporation, pursuant to Section 16 of the Stock Corporation Law.

2) for authorizing any guarantee, pursuant to Section 19 of the Stock Corporation Law.

3) for merger or consolidation, pursuant to Sections 85 and 86 of the Stock Corporation Law.

4) for sale of the franchises and property, pursuant to Section 20 of the Stock Corporation Law.

5) for voluntary dissolution, pursuant to Section 105 of the Stock Corporation Law.

6) for change of name, pursuant to the General Corporation Law.

3. The corporation may issue and sell its authorized shares without par value, from time to time, for such con-

451A

consideration as from time to time may be fixed by the board of directors.

IN WITNESS WHEREOF, we have made and subscribed this certificate this 15th day of May, 1962.

Thomas A. Vincel, President

Muno Tardo, Secretary

STATE OF NEW YORK)
COUNTY OF QUEENS) ss:

On this 15th day of May, 1962, before me personally came THOMAS A. VINCEL and MUNO TARDO, respectively the President and Secretary of Long Island Ree Truck Co., Inc., to me known and known to me to be the persons described in and who executed the foregoing Certificate and they thereupon severally duly acknowledged to me that they executed the same.

- 452A

18. With respect to ¶53 of the Answer, set forth

(a) the date each of the motor vehicles listed was delivered to L. I. Reo.

(b) the cost to L. I. Reo of each of the motor vehicles listed.

(c) how defendants compute the value listed for each of the motor vehicles listed.

(Interrogatory #18 of plaintiffs' interrogatories dated December 1, 1969)

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18. (a) and (b)

<u>Serial No.</u>	<u>Date of Shipment</u>	<u>Cost to Reo</u>
571819*	9-15-67	\$ 8,256.66
571797*	7-13-67	14,122.16
572067	7-12-67	7,145.39
572179	7-26-67	11,760.61
571914	7-24-67	17,399.76**
571883	7-26-67	8,667.02
572063	7-12-67	11,635.26
572954	7-20-67	11,972.91**

* These serial numbers were incorrectly typed in the Answer.

** The value listed in Paragraph 54. of the answer is incorrect. The correct figure is listed above.

(c) The value listed is the cost to Long Isl

Reo.

(Defendants' answer #18 and
Exhibit G to plaintiffs'
interrogatories dated March 2, 1970).

454A

WESTERN UNION

SENDING BLANK

CALL LETTERS	CHK	EU	CHARGE TO	R & M	218-2
			REGULAR TELEGRAM		
			August 25, 1967		
(WESTERN UNION-PLEASE SEND THE FOLLOWING TO: 612.10)					
LONG ISLAND DIAMOND REO TRUCK CO., INC. 47-19--69th Street Woodside, New York					
<p>OUR CLIENT, WHITE MOTOR CORPORATION HAS AUTHORIZED US TO ADVISE YOU OF YOUR DEFAULT IN THE VARIOUS AGREEMENTS AND PROMISSORY NOTES ISSUED TO THE COMPANY BY REASON OF YOUR FAILURE TO PAY FOR SEVEN NEW DIAMOND REO TRUCKS SOLD BY YOU IN THE AMOUNT OF APPROXIMATELY \$68,684.58. BY REASON OF THIS DEFAULT AND YOUR FRAUDULENT CONCEALMENT OF THE PROCEEDS OF THESE SALES, THE</p> <p>End of Page 1</p>					

Send the above message, subject to the terms on back hereof, which are hereby agreed to

PLEASE TYPE OR WRITE PLAINLY WITHIN BORDER—DO NOT FOLD
1269—(R 4-55)

WESTERN UNION

SENDING BLANK

CALL LETTERS	CHK	WU	CHARGE TO	R & M
-2-				
<p>AGREEMENT OF NOVEMBER 23, 1967, THE NOTE OF NOVEMBER 23, 1967, THE NOTE OF FEBRUARY 21, 1967, THE CONSIGNMENT AGREEMENT AND THE SECURITY AGREEMENT OF FEBRUARY 21, 1967 HAVE BEEN BREACHED AND ARE IN DEFAULT. PURSUANT TO THE TERMS OF SAID AGREEMENTS ON BEHALF OF WHITE MOTOR CORPORATION, WE HEREBY DEMAND PAYMENT IN FULL FOR THE AMOUNTS DUE AND OWING TO WHITE MOTOR CORPORATION ISSUED TO THE COMPANY OF APPROXIMATELY \$296,360.94, PLUS INTEREST AND DEMAND IMMEDIATE POSSESSION OF ALL NEW AND USED TRUCKS, ACCESSORIES EQUIPMENT AND PARTS PURSUANT TO THE AFORESAID AGREEMENTS AND NOTES.</p> <p>REAVIS & McGRATH</p>				

Send the above message, subject to the terms on back hereof, which are hereby agreed to

PLEASE TYPE OR WRITE PLAINLY WITHIN BORDER—DO NOT FOLD
1269—(R 4-55)

EXHIBIT "C"

- 455A

7.(g) Set forth the name of the individuals who quoted and were responsible for quoting and negotiating the sales price of trucks.

(Interrogatory #7g to defendants'
additional interrogatories dated March 20, 1970)

- 456A

7. (g) The sales price of trucks were quoted and negotiated by plaintiff Vincel, and the salesmen who were employed by L. I. Reo. (Donald Walker, Robert Ebel, Martin Piccininni and Adam Heiss).

(Plaintiffs answer # 7g to defendants interrogatories dated May 1, 1970)

Pursuant to Judge Dooling's order, attached hereto is an integrated set of documents giving the paper history of the St. Louis Terminal Warehouse Company field warehousing matter including the following documents:

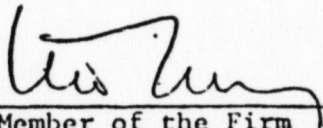
- (a) Letter of May 1, 1967 from Charles W. Smith to Glenn Kommer.
- (b) Letter of May 5, 1967 from Glenn Kommer to Sam Antelis.
- (c) Inter-office letter of May 5, 1967 from Glenn Kommer to C. E. Douglas.
- (d) Memorandum of June 23, 1967 from Glenn Kommer to C. E. Douglas.
- (e) Letter of June 30, 1967 from Robert Cummins to Charles W. Smith.
- (f) Inter-office letter of June 30, 1967 from C. E. Douglas to J. P. Dragin.
- (g) Memorandum of July 13, 1967 from J. P. Dragin to D. E. Halalsch.
- (h) Inter-office letter of July 31, 1967 from Don Heinisch to J. P. Dragin.
- (i) Letter of September 13, 1967 from Glenn Kommer to Henry D. Bugg.
- (j) Letter of September 13, 1967 from Glenn Kommer to Charles W. Smith.

(Defendants' answers
to plaintiffs' further
interrogatories #12 and
#13 (undated) - filed
March 13, 1973)

Yours, etc.

Reavis & McGrath

By


A Member of the Firm
Attorneys for Defendants
1 Chase Manhattan Plaza
New York, New York 10005

- 458A

STATE OF)
COUNTY OF)

ss.:

GLENN F. KOMMER, being duly sworn, says:

I am one of the defendants in the within action. I have read the foregoing answers to plaintiffs' further interrogatories and know the contents thereof and the same are true to my own knowledge, except as to matters therein stated to be on information and belief, and as to those matters, I believe them to be true. The basis for my belief as to the answers is information from the records of defendant White Motor Corporation.

Sworn to before me this

day of , 197 .

Notary Public

- 459A

STATE OF

COUNTY OF

)
: ss.:
)

, being duly sworn, says:

I am the
of White Motor
Corporation, an Ohio corporation, one of the defendants in the
within action. I have read the foregoing answers to plaintiffs'
further interrogatories and know the contents thereof and the
same are true to my own knowledge, except as to matters therein
stated to be alleged upon information and belief, and as to these
matters, I believe them to be true. The basis for my belief as
to the answers is information from the records of defendant
corporation.

I further say that the reason this verification is made
by me and not by defendant White Motor Corporation, is because
the said defendant is a corporation and I am an officer thereof,
to wit, its

Sworn to before me this

day of , 1973.

Notary Public

BANK OF COMMERCE

6 EAST 42ND STREET, NEW YORK, N. Y. 10017 • MURRAY HILL 2-6000

CHARLES W. SMITH
VICE PRESIDENT

Area XIV
460A

May 1, 1967

Mr. G. Konner, Treasurer
Lansing Division
White Motor Corp.
1331 South Washington Avenue
Lansing, Michigan 48920

Dear Mr. Konner:

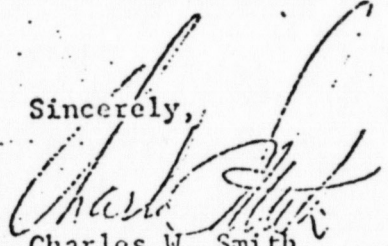
I have just received word from our counsel with regard to your Company's repurchase agreement in connection with our possible financing of your dealer, Long Island Reo Truck Co., Inc. He informs me that the agreement would be satisfactory subject to the following conditions:

- (1) Items 2 and 5 completely eliminated.
- (2) Item 3 to omit "less 5% thereof".
- (3) Item 1 to include the wording "except Federal tax liens and other liens of which you have no actual knowledge or notice".

If this hopefully meets with the approval of you and your counsel, we should be able to process the Long Island Reo's loan application immediately.

With kindest regards.

Sincerely,


Charles W. Smith
Vice President

CWS/acf

cc: Mr. Samuel Antellis
Long Island Reo Truck Co.
47-19 69th St.
Woodside, N.Y.



White Motor Corporation - letterhead

Bank of Commerce
56 East 42nd Street
New York, N. Y. 10017

- 461A

Attention: Charles W. Smith, Vice President

Subject: Long Island Reo Truck Co., Inc.

Gentlemen:

We have been advised that your bank is about to enter into an agreement with Long Island Reo Truck Co., Inc., 47-19 69th St., Woodside, N. Y., to assist it in financing the purchase of a certain stock of Diamond Reo Truck Division parts and to assist it in financing the purchase of additions to and replacements to said stock of parts, all of which parts would be placed by it in a bonded warehouse of the St. Louis Terminal Warehouse Company at 47-19 69th St., Woodside, New York.

We agree that upon written request, we will purchase from you all or any part of said stock of Diamond Reo Truck Division parts, including additional Diamond Reo Truck Division parts purchased from us for replenishment or for increasing the stock, which at that time is located in the St. Louis Terminal Warehouse Company's bonded warehouse in 47-19 69th St., Woodside, N. Y., such purchase being subject to the following conditions:

- 1 - That we are furnished good title to the said parts with a written warranty by you on or before the transfer of the parts that they are free and clear of all claims, liens and encumbrances, except Federal tax liens and other liens of which you have no actual knowledge or notice;
- 2 - That the price we are to pay for the goods shall be our then current published dealer's prices for same;
- 3 - That the maximum value of the parts we shall be called upon to purchase under this agreement will be \$75,000; and

- 462A

4 - That this agreement shall expire one year from date unless extended by the parties in writing not less than thirty days before the scheduled expiration.

If this agreement is satisfactory to you, please approve one copy of the same and return it to us.

Yours very truly,

WHITE MOTOR CORPORATION

Treasurer

APPROVED:

BANK OF COMMERCE

By _____

Title _____

Mr. Sam Antalis

463A

G. F. Kormner

May 5, 1937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Sam:

It appears that the Bank of Commerce will lend Long Island Res Truck Co., Inc., approximately \$75,000 on parts.

The auditors have completed their review of the dealer's operation and are scheduled to meet with me in Lansing, Tuesday, May 5th.

Do not disburse any of the proceeds of this loan to any person for any reason without my express permission. I want to review the results of the audit and the ageing of the payables and will advise you promptly as to the disbursement of this sum.

GFK/vrh

G. F. Kormner

cc: D. E. Heinisch

WHITE MOTOR CORPORATION

464A

INTER OFFICE LETTER

10 Mr. C. E. Douglas, Treasurer FROM G. F. Kommer

May 5, 1967
DATE

DESTINATION General Office

SUBJECT Long Island Red Truck Co., Inc.

In regard to our recent telephone conversation regarding certain amendments to our standard repurchase agreement for parts to be extended to the Bank of Commerce on a parts loan to be made by them to Long Island Red Truck Co., Inc., the Bank agreed today to accept our repurchase agreement specifying expiration of one year.

This completes the negotiations and it is in order now for you to issue the amended letter on your stationery as agreed and as outlined on the attached.

G. F. Kommer

GFK/vrh
Attach.

cc: T. Vincci
S. Antells
D. Heintsch

465A

JUN 23 1967

R. G. BARNER

Mr. C. E. Douglas, Treasurer

G. L. Kanner

June 23, 1967

General Office - Cleveland

Long Island Res - Cash Flow Projection

As part of the current review of Long Island Res, the General Office Audit Staff made an estimate of cash flow of the dealer. This estimate was based on the dealer's performance during the six months Oct. 1, 1966 thru March 31, 1967 and indicated a cash deficit on the order of \$16,000 per month. I feel the period chosen is not representative because the three principals of the dealership were "out of action" for many weeks during the last quarter of 1966 while the trust agreement was being negotiated. I have, therefore, made another estimate of cash flow (see attached).

In summary, this revised estimate indicates the dealer's cash receipts will slightly exceed disbursements on an annual basis if Diamond Res relaxes certain punitive provisions of the current agreement with the dealer as follows:

- 1 - Pay warranty claims in cash instead of applying them to the debt to the factory.
- 2 - Absorb all of the General Manager's salary (current charges to the dealer are \$700 per month).
- 3 - Cut the \$500 charge per new truck shipped in half.

The revised cash flow estimate reflects the above changes and is also based on the following additional assumptions:

- 1 - 120 new trucks will be sold in the next 12 months (vs 110 units in fiscal 1966).
- 2 - Used trucks can be disposed of at a break-even.
- 3 - Current parts and service gross income can be maintained.
- 4 - Body companies will agree to accept payments on a deferred basis. An agreement has already been reached with Hillside Tank and Body and the General Manager believes current negotiations with Commercial Tank and Body will be successful.

The dealer's debt to the factory, in round numbers, was originally \$257,000. Through May, 1967, this has been reduced to \$173,000 against which a reserve of \$64,000 has been established to date. At a pick up rate of \$60,000 per year (based on 120 trucks at \$500 each), the debt of \$173,000 will be liquidated in about six years.

Mr. C. E. Douglas

June 28, 1957

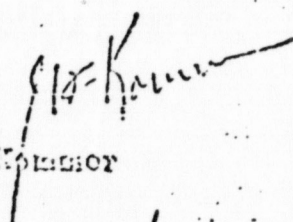
Page 2

466A

The reduction in the charge per truck from \$600 to \$200 could be made on a flexible basis, i.e., if sales exceed the projection, the charge could be increased again.

I recommend we continue to work with this dealer on the above basis and, to augment his working capital, that we enter into the proposed repurchase agreement with the Pack of Commerce to finance the dealer's present inventory of current parts plus future purchases on a warehouse receipt plan.

Please advise.


G. F. Kimmner

GFK/vrh
Attach.

cc: Messrs. D. E. Weitzel
F. Appeldorn
J. P. Dragin
✓ R. G. Eason
J. L. Adams

467A June 30, 1967

Bank of Commerce
5 East 42nd Street
New York, New York 10017

Attention: Charles W. Smith, Vice President

Re: Long Island Red Truck Co., Inc.

Gentlemen:

At the request of Mr. Kommer, Treasurer of this company's Diamond Red Truck Division, I have reviewed your draft of the letter by which this company would agree to purchase from you the parts inventory of Long Island Red Truck Co., Inc.

The basic form of the letter is acceptable; however, I believe that certain changes are in order to more properly effect our understanding and to reflect occurrences since the preparation of your draft. These relate to a specification that the parts must be new; that the exceptions to your warranty of title are confined to liens against Long Island Red Truck Co., Inc.; a limitation of \$27,000 on the obligation to purchase the initial stock of parts placed in the warehouse; and a statement regarding the perfection of a security interest in the parts.

I do not feel that the requirement for perfection of the security interest is in order because of the exceptions which have been made to your warranty of title upon sale to this company. I do not feel that this requirement would be particularly burdensome for you in that a record search would disclose other creditors having security interests in parts inventory, including after-acquired inventory, the necessary notice under UCC 9-312(3) could be sent to creditors disclosed as having possible conflicting security interests, and the Financing statements filed in a routine manner. Long Island Red Truck Co., Inc. has places of business in two counties.

After you have had an opportunity to review the changes, I would be pleased to discuss them with a representative of your bank.

Very truly yours,

Robert H. Cummins

C:bs
Enclosure
cc: Mr. G. F. Kommer
cc: Mr. C. E. Douglas

WHITE MOTOR CORPORATION
(Letterhead)

468A

Bank of Commerce
56 East 42nd Street
New York, New York 10017

Attention: Charles W. Smith, Vice President

Re: Long Island Reo Truck Co., Inc.

Gentlemen:

We have been advised that your bank is about to enter into an agreement with Long Island Reo Truck Co., Inc., 47-19 69th St., Woodside, N. Y., to assist it in financing the purchase of a certain stock of new Diamond Reo Truck Division parts and to assist it in financing the purchase of additions to and replacements to said stock of new parts, all of which parts would be placed by it in a bonded warehouse of the St. Louis Terminal Warehouse Company at 47-19 69th St., Woodside, New York.

We agree that upon written request, we will purchase from you all or any part of said stock of new Diamond Reo Truck Division parts, including additional new Diamond Reo Truck Division parts purchased from us for replenishment or for increasing the stock, which at that time is located in the St. Louis Terminal Warehouse Company's bonded warehouse in 47-19 69th St., Woodside, N. Y., such purchase being subject to the following conditions:

1 - That we are furnished good title to the said parts with a written warranty by you on or before the transfer of the parts that they are free and clear of all claims, liens and encumbrances, except Federal tax liens against Long Island Reo Truck Co., Inc. and other liens, of which you have no actual knowledge or notice, in favor of other creditors of Long Island Reo Truck Co., Inc. against the said stock of parts.

2 - That the price we are to pay for the goods shall be our then current published dealer's prices for same.

3 - That the maximum value of the parts we shall be called upon to purchase under this agreement will be \$75,000; except that, with respect to the new parts

which are presently in the inventory of Long Island Reo Truck Co., Inc. and will constitute the initial stock of new parts to be placed in the said bonded warehouse, the maximum amount we shall be called upon to purchase under this agreement will be \$27,000.

4 - Our obligations hereunder are contingent upon your having perfected a security interest in the said stock of parts which has priority over all other conflicting security interests in the same collateral.

5 - That this agreement shall expire one year from date unless extended by the parties in writing not less than thirty days before the scheduled expiration.

If this agreement is satisfactory to you, please approve one copy of the same and return it to us.

Yours very truly,

WHITE MOTOR CORPORATION

Treasurer

APPROVED:

BANK OF COMMERCE

By _____

Title _____

INTEROFFICE LETTER

Mr. J. P. Dragin

From C. E. Douglas

470A

JUL 3 1967

Office

Date 6-30-67

J. P. DRAGIN

Subject

Copy to: Mr. Bensen

Dear Pete:

I have reviewed the Audit Report on Long Island Reo in addition to the recommendations contained in Mr. Kommer's letter of June 23, 1967. In view of the fact that you have a copy of the Audit Report, as well as Mr. Kommer's letter, I will restrict my remarks to the major considerations.

Long Island Reo is currently indebted to the Diamond-Reo Division in the amount of approximately \$178,000. According to Mr. Kommer, this represents a reduction from an original indebtedness of \$257,000, when it was first learned that the dealer was Out-of-Trust and in serious financial difficulty. In late 1966 a Trust Agreement was entered into under which the stock was placed in escrow and Mr. Kommer was named as the Trustee with the power to vote such stock. This in effect conveyed to him virtual management control over the dealership. Since the date of this Trust Agreement, the Diamond-Reo Division has succeeded in recovering approximately \$20,000 through the technique of marking up each invoice by \$500.00 per truck.

Following the Audit Report, I requested that Mr. Kommer prepare a Cash Flow Forecast of this dealership for the next year to determine our future course of action. Mr. Bensen and certain members of his Audit group feel that this forecast is overly optimistic and of insufficient detail to permit the development of a sound program for the rehabilitation of this dealership. I am in agreement with the objections taken; however, I do feel that we must take certain immediate steps to keep this dealership from going into bankruptcy before Mr. Kommer has the opportunity to develop the additional information which we feel is required.

In order to temporarily alleviate the cash shortage of this dealership, I am prepared to accept Mr. Kommer's suggestion that we enter into a St. Louis Warehouse Company program with Bank of Commerce of New York City under which we would agree to repurchase certain new and useable parts up to \$30,000. The parts inventory is presently unencumbered and substantially in excess of this figure but I would like to hold the maximum advance to this amount until we can fully resolve our position. In this connection, I should point out that I do not believe that we are in any way jeopardizing our present position in the event bankruptcy occurs in the near future as we would in all likelihood be forced to return the \$20,000 that we have already recovered under the four-month rollback provision under Federal Bankruptcy Law.

The reasons for keeping this dealership in business would appear to be rather valid.

Mr. Dragin

1. From the standpoint of volume this is the largest Diamond-Reo outlet with an established sales potential of 100 to 120 units per year. - 471A

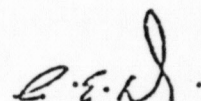
2. The principal, Tom Vincell, is an excellent salesman although an extremely poor businessman, with unusual contacts in the refuse business which represents his principal market. I definitely believe that it would prove difficult for a new dealer to make any appreciable headway in this particular market for a number of years.

3. Although it is our judgment that Mr. Kommer's forecast is overly optimistic, there is a good possibility that we could hope to recover the outstanding obligations to us over at least an eight-year period, with proper management and guidance.

I am recommending that we proceed with the St. Louis Warehouse Company program on the condition that Mr. Kommer furnish us within a thirty-day period with a realistic cash-flow forecast by month, the establishment of a sound budget system for expenses, and the required controls recommended in the Audit Report and agreed to by Mr. Kommer.

This has been an unusually difficult situation as a result of the poor accounting practices of the dealership but I now feel that we are finally getting to the full facts and that following this thirty-day period we can make a factual decision regarding our future course of action.

If it proves impossible for Mr. Kommer to develop a program which is realistic and one that can successfully place this dealership on a sound and profitable basis we will have no choice but to undertake liquidation proceedings. Should this prove necessary, it is my estimate that the \$94,000 reserve which we established for this account last year should prove adequate to cover our losses.



C. E. Douglas

Mr. D. E. Holmbeck
Diamond Reo Division

472A

J. P. Craigla
Executive
Vice President

July 13, 1937

Long Island Reo Truck Co. Inc.

cc: Messrs. J. L. Adams
J. N. Bauman
C. E. Douglas
G. F. Kerner

I have reviewed the credit position of Long Island Reo Truck Company, Inc. and have come to the conclusion that it is very doubtful whether we will be able to recover the approximately \$170,000 which they owe the Diamond Reo Division.

I base my opinion on the fact that it is doubtful, after the balance sheet has been completely adjusted for uncollectible receivables and obsolete service parts as to whether there will be any equity in the operation. In addition, assuming a better operation of the dealership in the future, the profits will be minimal. I am, however, willing to approve a St. Louis Warehouse plan for service parts up to \$30,000 as Mr. Kerner's projections indicate that it is possible to recover this \$30,000 in five months and there may be some legal question as to whether we would be entitled to keep the \$30,000 which we have collected against our debt to date. My approval is conditioned on the promise that there is some equity in the building owned by a subsidiary of Long Island Reo Truck Company, Inc. and we will be able to get a second mortgage to apply against the notes due us and that the District Manager who is assigned to this account, in cooperation with Mr. Kerner, is made responsible for a businesslike operation of the dealership including the evaluation of used trucks taken in on trades, extension of credits, and parts ordering, so that we can be sure that additional obsolescence in the service inventory is not being created.

The General Office auditors attempted to adjust the dealer's balance sheet as of March 31, 1937. In reviewing this balance sheet with Mr. Kerner I have a very strong suspicion that there are further write-downs to be made. The receivables and parts inventory must be screened thoroughly and adjustment made to reduce them to realizable values so that we will be able to evaluate the future credit status.

I should like to have your acceptance of the above conditions in writing.

JPD:mlp

J. P. Craigla

473A
DIAMOND REO TRUCK DIVISION

WHITE MOTOR CORPORATION

INTER OFFICE LETTER

Mr. J. P. Dragin
Executive Vice President

FROM Don Heinisch

July 31, 1967

DATE

RECEIVED

AUG 2 1967

J. P. DRAGIN

ORIGINATOR

SUBJECT

Dear Pete:

Reference to your letter of July 13, 1967 concerning Long Island Reo and your approval of a St. Louis Warehouse plan for service parts up to \$30,000, I wish to advise the following. Mr. Kommer has assured me that he will place second or third mortgages on the buildings owned by the subsidiary of Long Island Reo. Via appraisals made under Mr. Douglas' jurisdiction, I understand there is considerable equity in these buildings.

Jack Adams has also assigned Garth Collins, the District Manager, the responsibility to check this account once a week to make certain that it has been handled in a businesslike manner, evaluating the used trucks taken in on trades, the extension of credits and parts ordering. Mr. Collins has been instructed that any discrepancies in regards to any of these items are to be pointed out to Mr. Adams immediately so that steps can be taken to correct them before they get out of hand.

Don Heinisch

DH:b

cc: J. N. Bauman
C. E. Douglas
J. L. Adams
G. F. Kommer

- 474A

September 13, 1957

Mr. Henry D. Dugg
Executive Vice President
St. Louis Terminal Field Warehouse Company
P. O. Box 242
St. Louis, Missouri 63166

Subject: Long Island Reo Truck Co., Inc.
Woodside, New York

Dear Mr. Dugg:

As you may recall, for some time we had been working with you and your local New York representative to establish a St. Louis Terminal Field Warehouse program covering the parts inventory at our dealer in Woodside, Long Island, New York - Long Island Reo Truck Co., Inc.

I regret to advise that we will not enter into such an arrangement with this dealer in view of his financial condition.

Yours very truly,

GFK
G. F. Kottner
Treasurer and Controller

GFK/vrh

ONLY COPY AVAILABLE

- 475A

September 13, 1957

Mr. Charles W. Smith, Vice President
Bank of Commerce
56 East 42nd Street
New York, New York 10017

Subject: Long Island Red Truck Co., Inc.
Woodside, New York

Dear Mr. Smith:

Confirming our telephone conversation of September 12th, this is to advise that we will not enter into a parts repurchase agreement covering a loan by you to our dealer in Woodside, Long Island, New York.

Yours very truly,

GFK
G. F. Kommer
Treasurer and Controller

GFK/vrh

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SECURITY AGREEMENT

476A

Made this 1st day of July, 1966 by Long Island Reo Truck Co., Inc. (herein called "L. I. Reo"), a New York corporation now engaging in the business of selling new and used motor vehicles and accessories and parts therefor, with its principal place of business at 47-19 69th Street, Woodside, New York.

WHEREAS, L. I. Reo is indebted to White Motor Corporation (herein called "White") in the principal amount of \$192,837.57 (which sum with interest thereon shall be herein called "Indebtedness"), payment of which is provided for in that certain agreement between L. I. Reo, Thomas A. Vincel, Nuno Tardo, William Breen, and White dated July 15, 1966 (herein called "Agreement"), and in that certain promissory note made by L. I. Reo to White dated July 23, 1966 (herein called "Note").

NOW, THEREFORE, in consideration of the Agreement and as security for the performance of the terms and conditions thereunder and as security for the Indebtedness and the performance of the Note, L. I. Reo does hereby convey to White a security interest in the following property: all motor vehicles listed on Schedule A, which is attached hereto and incorporated herein; all motor vehicle accessories and parts listed on Schedule B, which is attached and incorporated herein; and in all other motor vehicles and motor vehicle accessories and parts of whatever description now owned or hereafter acquired by it and all proceeds thereof (all of which motor vehicles and motor vehicle accessories and parts shall be hereafter called "Equipment"), together with all accessories and attachments thereon.

L. I. Reo hereby authorizes White to prepare and file Financing Statements perfecting its security interest in the Equipment and to execute such documents on behalf of L. I. Reo.

L. I. Reo warrants that it has a place of business in more than one county within New York, and that the Equipment will be located at Woodside, New York and Hempstead, New York, which basing points will not be changed without the written consent of White.

It is agreed that anything, whether repair, replacement, addition, body, tires, accessories, or substitution placed upon the Equipment during the life of this instrument shall become a component part of the Equipment and be secured by the security interest granted herein, and the same shall be included in the word "Equipment" as used herein. L. I. Reo shall make no material change in the Equipment without White's written consent.

It is agreed that no transfer, renewal, extension or assignment of this instrument or any interest hereunder, or injury to or loss or destruction of the Equipment shall release L. I. Reo from the obligations hereunder; that L. I. Reo

EXHIBIT "F"

(Exhibit F to defendants answers to plaintiff's interrogatories dated March 2, 1970)

- 477A

shall keep the Equipment free of all taxes, liens and encumbrances and shall not transfer nor suffer the transfer of any interest in this instrument or in the Equipment provided, however, that L. I. Reo shall have the right to sell the Equipment at retail to purchasers for value in the ordinary course of business, in which event any and all proceeds arising from such sale shall be fully, faithfully and promptly accounted for and paid to White to the extent of L. I. Reo's outstanding obligations to White. L. I. Reo shall not use nor permit the use of the Equipment in violation of the laws or regulations of any governmental body. L. I. Reo shall carry insurance on the Equipment in companies approved by White, payable to White as its interest may appear, against loss by collision in any amount in excess of \$250 up to the value of the Equipment at the time of collision, and against loss by fire and by theft in the amount equal to the value of the Equipment at the time of the loss, except that theft insurance may provide \$50 deductible in case of partial theft loss; and L. I. Reo shall keep such insurance in full force during the term of this instrument. Such insurance shall contain a provision that the policy cannot be canceled or lapsed for any reason without ten (10) days prior written notice to White. L. I. Reo shall furnish White with a certificate or a memorandum copy of such insurance. White may, but is not obligated to, carry insurance on the Equipment if L. I. Reo fails to do so and may add to the indebtedness the cost of the same, which L. I. Reo hereby agrees to pay. L. I. Reo hereby directs any insurance company to make payment of any monies, payable because of insurance provided in this instrument, directly to White and any such monies so paid are hereby assigned to White to the extent of the unpaid balance under this instrument. White is hereby appointed L. I. Reo's Attorney-in-Fact to prepare and submit any notice or proof of loss and to endorse any check which may be payable to L. I. Reo in order to collect the benefits of such insurance.

Time is of the essence of this instrument. It is agreed that if L. I. Reo shall default in the performance of any of the terms and conditions of the Agreement or the Note or the terms and conditions of this instrument; or if L. I. Reo shall commit any waste or misuse and not keep the Equipment in good repair; or if L. I. Reo shall secrete or remove the Equipment without White's written consent; or if the Equipment shall be seized under process of law had against L. I. Reo; then, in any or all of such events, White is hereby authorized and empowered to enter any premises of L. I. Reo or other place where the Equipment may be and take possession thereof without notice or demand. After taking possession of the Equipment, it may be sold, with or without notice in those jurisdictions in which the same can be waived, at a private or public sale, at either of which White may purchase, and without having the Equipment at the place of sale. From the proceeds of a sale of the Equipment pursuant to a default by L. I. Reo, there shall be deducted all expenses involved in the retaking, storing, placing in good saleable condition, and selling the Equipment, and, to the extent permitted by law, all reasonable

after previous, White will give notice of same.

478A

attorney's fees and legal expense incurred thereby and all amounts paid for the release of any prior liens on the Equipment regardless of the cause thereof; the balance of the proceeds of such a sale shall be applied to the Indebtedness and the Note, and L. I. Reo shall remain liable for and shall forthwith pay any remaining balance; any surplus after such application shall be paid to L. I. Reo. The rights and privileges of White with respect to the possession and resale of the Equipment and disposition of the proceeds thereof shall include those afforded by the New York Uniform Commercial Code if it is applicable to default under this instrument.

The term "White" shall include assignees of White and all other holders of this instrument. This instrument constitutes the only and entire agreement between L. I. Reo and White with respect to the security interest in the Equipment. No variation, modification or waiver of any of its provisions shall be valid unless in writing and signed by L. I. Reo and White. It is agreed that White may waive any default by written notice to L. I. Reo, but such waiver shall not limit or affect White's rights upon any other default.

If any provision of this instrument shall for any reason be held invalid or unenforceable, this instrument shall be construed as if such provision had never been contained herein.

Signed by the parties on the date first above written.

Long Island Reo Truck Co., Inc.

By Thomas A. Vinel

White

The acceptance of this agreement by White shall constitute a waiver or release of any rights White may have by reason of any default prior to February 1, 1967 by Long Island Reo, Thomas A. Vinel or others in or relating to a note from Long Island Reo to White dated Nov. 23, 1966 and for an agreement between White, Long Island Reo, Thomas A. Vinel and others dated as of Nov. 23, 1966, and White reserves all rights to enforce any remedies it may have in connection with any such defaults. Long Island Reo will execute upon White's request, such instruments as White deems necessary in connection herewith.

Wick
100

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479A

Schedule A

Security Agreement dated February 21, 1967 by
Long Island Red Truck Co., Inc.
Motor Vehicles

Serial Number

550436 Reo.	X 1756 GMC	FV 10Y35 (Int.)
566618 "	54Y105 Reo.	Y3Y79 Mac.
538495 "	567505 "	534848 Reo
568481 "	538380 "	534517 "
FA 8145Y6 (Int.)	534509 "	5Y3378 "
54807V Reo	566030 "	1034 Mac.
566374 "	567388 "	5Y7Y69 Reo
569677 "	566947 "	53949V "
569676 "	100038 Trend	5Y1Y49 "
535285 "	569610 Reo	Y3Y78 Mac.
564439 "	569430 "	565085 Reo
567006 "	570113 "	568678 "
100034 Trend	5687Y9 "	567367 "
569771 Reo	56951V "	568455 "
568456 "	570107 "	HF A85174 (X)
541870 "	604Y10 White	602 Volvo
SB 1X808 LF (Int.)	607748 "	568617 Reo
569560 Reo	FR 40859 (Int.)	568693 "
569105 "	5Y3103 Reo	533166 "
U 170778 Ford	544950 "	5Y2Y8V "
534771 Reo	5Y186A GMC	569651 "
565301 "	5698Y8 Reo	5698Y9 "

- 480A

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Schedule A

Security Agreement dated February 21, 1967 by
Long Island Leo Travel Co., Inc.
Motor Vehicles

Serial Number			
550436	Reo.	X 1756 GMC	FV 10735 (Int)
568618	"	547105 Reo.	73779 Mach
538475	"	569505 "	534848 Reo
568431	"	538380 "	534517 "
FA 814576	(Int)	534509 "	57278 "
548077	Reo	566030 "	1034 Mach
566374	"	567388 "	577769 Reo
569677	"	566947 "	538497 "
569676	"	100038 Trend	571749 "
535385	"	569610 Reo	73778 Mach
564439	"	569430 "	565085 Reo
567006	"	570113 "	568678 "
100034	Trend	568779 "	567367 "
569771	Reo	569517 "	568455 "
568456	"	570109 "	HF A 85194 (
541870	"	604710 white	602 Volvo
SB 17508 LF	(Int)	607948 "	568619 Reo
569560	Reo	FR 40859 (Int)	568683 "
569105	"	573103 Reo	533166 "
U 170978	Ford	544950 "	577787 "
534791	Reo	57186A GMC	569681 "
565504	"	569878 Reo	569779 "

Def. Ex. ~ for 27
11/3/67-27

- 481A

January 23, 1967

Mr. Samuel Antellis
172-20 130rd Avenue
Jamaica, New York 11434

Dear Mr. Antellis:

This will confirm my offer of employment as Business Manager of the Long Island Red Truck Co., Inc. at an annual salary of \$10,700.00. As agreed, you will start on February 6, 1967.

The necessary employment forms, etc. will be forwarded to you promptly. Please return them to me.

We would like to have you visit Lansing in the near future to meet our people and discuss controls to be established at Long Island Red. I will let you know as soon as possible on this.

Yours very truly,

G. F. Kommer
Treasurer

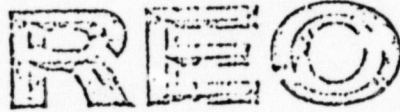
GFK/vrh

cc: Mr. D. E. Heinisch
Mr. J. L. Adams

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(Letters submitted by plaintiffs attorneys
to the Court on or
about May 14, 1973 concerning the
employment of Samuel Antellis)

482A



MOTOR TRUCK DIVISION



ITE MOTOR CORPORATION - LANSING, MICHIGAN 48920

February 13, 1967

Mr. Samuel Antelis
c/o Long Island Reo Truck Co., Inc.
47-19 69th Street
Woodside, L.I., New York 11377

Dear Sam:

Confirming our recent telephone conversation, would you please take immediate steps to do the following:

- 1 - Obtain Resolution from Board of Directors of Long Island Reo appointing yourself as General Manager.
- 2 - Establish yourself and one other person as authorized check signers, removing other employees' names from the list of signers.
- 3 - Establish escrow deposit account for down payments by customers as provided in the "November" agreement.
- 4 - Organize the Accounting Department so as to issue financial statements monthly.
- 5 - Investigate practicality of issuing brief, summary financial statements showing key indicators at intervals during a month.
- 6 - Prepare a formal, complete profit plan or budget for Long Island Reo for the year 1967.
- 7 - Investigate use of St. Lewis Warehousing or similar program to finance parts to obtain working capital.
- 8 - Investigate factoring of receivables to improve working capital.

This will also confirm our present arrangements to have you visit Lansing, Tuesday, Feb. 21st, to review your progress on the above items and meet our people.

Yours very truly,

*Ref. Ex. 15 for 826
11/3/67-2 7*

483A

*Def. Ft. 22 for 361
11/3/67-27*

Mr. Sam Antelis
c/o Long Island Reo

G. F. Kommer

March 13, 1967

Dear Sam:

I have decided, as an additional measure of prudence, that you should be bonded. This is no reflection on you whatsoever as I would have bonded anyone in your position. This will, of course, be at no cost to you.

Please complete at least one copy of the attached "Application for Fidelity Bond" and return to me as soon as possible.

Best regards.

G. F. Kommer

GFK/vrh



LONG ISLAND REO
TRUCK CO., INC.

47-19 69th ST., WOODSIDE, N. Y. 11377 • 212 899-0817

*Def. Ex. 20 for rd.
11/3/67-27*

March 21, 1967

- 484A

Mr. Glen Kommer
Reo Division - White Motor Corp.
1331 South Washington Avenue
Lansing, Michigan. 48920

Dear Glen:

Enclosed you find Hospitalization Card with appropriate signature. Also enclosed a copy of pay statement for period ending 2/25/67 with a circled deduction of \$29.58.

If this is a pension payment as indicated I would like to resign from the plan before my next scheduled pay date if possible. The amount of money involved is a little too much for me to bear right now.

Thanking you for your help.

I remain yours,

Sam Antelis

SA:md
Encl:

Handwritten: New 2.6.67

Def. F-7 - 460-221
11/3/67-27

485A

File

March 28, 1967

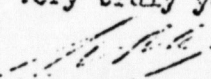
Mr. Samuel Antolis
172-20 133rd Ave.,
Jamaica, New York 11434

Dear Sir:

With reference to your letter to Mr. Korman, the deduction of \$29.58 was for our Contributory Pension Plan. This was in accord with the Application for Contributory Pension you signed and forwarded.

If you wish to withdraw from this Plan, please complete the enclosed card and return to the writer at your earliest convenience.

Very truly yours,


A.A. Arlino
Director of Personnel

AAA:p
Encl.

cc: S. Korman
Cashier

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486A

Mr. Sam Antella

G. F. Kommer

April 6, 1937

c/o Long Island Reco

Long Island Reco.

Dear Sam:

Would you please establish a routine of conducting car checks of the new and used truck inventory of the Long Island Reco as of the end of each month and reconcile these accounts to your books and report the results to me. I would like the inventory count to be segregated between the trucks originally financed by C.I.T. and subsequent shipments.

You would also be well advised to, on your own initiative, conduct surprise car checks at other times during the month. If necessary, please solicit the assistance of Mr. Garth Collins in making these checks.

G. F. Kommer

GFK/vrh

cc: Mr. Collins

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- 487A
LANSING DIVISION

WHITE MOTOR CORPORATION

INTER OFFICE LETTER

Mr. Samuel Antelis

FROM G. F. Kommer

May 11, 1967
DATE

ESTINATION c/o Long Island Reo

SUBJECT

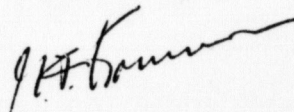
Per our telephone conversation of May 11th, enclosed is a supply of Expense Reports. Only one copy need be submitted. Receipted bills for all items except meals, tips, etc. where it is not practical to obtain same must be attached to the Expense Report. Only one copy is required. The mileage allowance is 9¢ per mile rather than actual car expense.

We will absorb the \$10.30 travel expense mentioned in your letter of May 9th.

As discussed with you, we do not review a new employee for a merit increase until he has been on the payroll for six months. I will contact you at that time.

This will also confirm my request for a copy of the financing statement or other documents which the Bank of Commerce indicates must be cancelled before the parts loan can be approved by them.

GFK/vrh


G. F. Kommer

- 488A

Def. F-27 60201.
"13/67-27"

Mr. Sam Antolis

G. F. Kommer

June 26, 1967

c/o Long Island Reo

Enclosed is your Blue Cross-Blue Shield Identification Card.

G. F. Kommer

GFK/vrh



- 489A
DIAMOND REO TRUCK DIVISION

WHITE MOTOR CORPORATION

- INTER OFFICE LETTER

TO Mr. Sam Antelis

FROM G. F. Kommer

Aug. 4, 1967

DATE

DESTINATION

SUBJECT

Report of Time Off with Pay

It has been brought to our attention by the Payroll Clerk that we neglected to inform you that it is necessary for you to report all time off with pay on the attached form.

Please complete a form for Feb., March, April, May, June and July and send to us - and hereafter - fill a form out and forward it on the first day of each month covering the preceding month.

If you have any questions, please write us.

G. F. Kommer/vrh



490A

DIAMOND REO TRUCK DIVISION

WHITE MOTOR CORPORATION

INTER OFFICE LETTER

TO ALL REGIONAL MANAGERS

FROM G. E. Lenartson

August 16, 1967

DATE

DESTINATION

SUBJECT

O. Davis
M. Boyden
G. Collins
E. Lyman
F. Clary
K. Busch
E. Capps
J. Joyce
J. White

T. Shumway
R. Pohrer
R. Hascall
C. Sahling
C. Wallace
C. Trombley
R. Holmstrom
D. Hartshorn

W. Johnson
L. Dolbee
N. Cochrane
L. Forthman
W. Skinner
H. Lanz
S. Antelis ✓

In conjunction with our annual inventory it will be necessary that each one of you physically check the location of all factory trucks in your name and in the hands of your dealers as of August 31, 1967.

I will need a list from each of you showing the following information on each vehicle:

Model
Serial No.
Location

This list must be in my possession no later than September 5, 1967.

GEL/tp

G. E. Lenartson

COPY

Not Sent 491A

FILE NO. 91-2

REAVIS & MCGRATH

August 21, 1967

Eliot N. Lumbard, Esq.
Messrs. Townsend & Lewis
120 Broadway
New York, New York 10005

Re: White Motor Corporation-
Long Island Railroad-also
Trust Co., Inc.

Dear Eliot:

Tom Vincel may have told you that Glenn Womack was in New York to discuss with Tom various matters relating to the matter being by your corporate client as well as the result that White enter into a settlement with the Trust Co. of New York in connection with the proposed Long Island Railroad Corporation purchase financing arrangement.

As you know, our client has done everything possible to see to it that Vincel has the opportunity to recover the money which was advanced in November. In that connection, as you will remember, in January there arose a problem with regard to some of the corporation's checks being dishonored because of lack of funds and certain vehicles which were sold "out-of-order". Even though that event caused this matter to be considered the position was not remedied in November, our client was willing to merely accept the un-recovered amount note in the amount of \$42,750.50.

At this juncture, however, since the February transaction involved actual cash lost by our client, our client finds it difficult to guarantee any new obligations which Vincel proposes to enter into, without adequate security. It also notes that no monies have been paid our client in reduction of the February note.

I understand that our client's desires have been

(Letter dated August 21, 1967 addressed to
Eliot Lumbard -submitted in defendants'
response to plaintiffs' demand for
documents dated May 4, 1970)

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REAVIS & MCGRATH

Eliot H. Hubbard, Esq.

-2-

August 21, 1967

recommended to Tom and Tom and Glenn have discussed the question of security for any new obligations which White might take on in regard to the corporation. I also understand that Glenn has discussed with Tom the fact that there is nothing to have the notes due under the February note repaid to it. However, I understand that Tom has stated that those funds are not now presently available.

I also understand that Tom is aware of the fact that JIF has terminated of our extent payment of the interest on Tom's old first loans which interest is not never paid. Thus, there is an additional amount that will be due to us of approximately \$1,700.

Based upon the above state of facts, I have recommended to our client that payment of the February note be deferred, pending to new terms. I think that it is in our best interest that it will not be paid, in order to avoid the necessity of proceedings to collect on the note, our client should a new note in the amount of the February note, plus interest, plus the amount due to JIF by our client as a result of the unpaid interest charges. I have also recommended that our client should not enter into any other loans with the Bank of Commerce until the question of repayment of this new note and security for the repayment has been worked out. It is my recommendation that as security for the new note Long Island Macaroni Corp. Inc. to guarantee the new note and that such note be secured by a mortgage on the parcels owned by the Macaroni Corp., Inc. in Queens and Suffolk Counties. I think that this would reflect to any possible liability to the Bank of Commerce of its engagement with the Bank of Commerce and the guarantee and mortgage would reflect such a situation.

As you know, the guarantee by Lisco Enterprises, Inc. of the obligations of its affiliate Long Island Macaroni Corp. Inc. will have to be approved by the stockholders of Lisco Enterprises, Inc. My records show that these stockholders are members of the families of those persons most closely associated with the truck business... the Vincis, the Bruns and the Tarces. Thus, I can envision no difficulty with regard to their agreeing to this arrangement. We would also need the necessary corporate resolutions.

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COPY

493A

FILE NO. _____

REAVIS & MCGRATH

Ellet H. Lombard, Esq.

-3-

August 21, 1937

Since I understand that the question of the parts financing arrangement is important to you, I would appreciate it if you could be good enough to discuss this matter with you and advise me of how you wish to proceed. I have advised our client not to take any action with regard to the proposed agreement with the Bank of Commerce nor to take action with regard to the February note until I have heard from you.

I hope your summer has been calm and I also hope that this letter will not unduly disturb the peace you have had.

Best wishes.

Cordially,

Stephen R. Steinberg

cc to:

Mr. E. E. Douglas, Treasurer
White Motor Corporation
100 Melview Plaza
Cleveland 14, Ohio

Robert Cummings, Esq.
White Motor Corporation
100 Melview Plaza
Cleveland 14, Ohio

Mr. Glenn F. Hammer, Treasurer
Diamond Tool Division, White Motor Corp.
1001 South Washington Street
Lansing, Michigan

cc: Mr. Adams

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- 494A

14. (a) The following is a list of motor vehicles which were "out of trust" as alleged in paragraph 45 of the answer:

<u>Model No.</u>	<u>Serial No.</u>
E530-66	564293
DF402-66	566898
F830-66	566345
E502-66	567235
E530-66	567484
E502D-66	567580
D732D-67	567532
61REOC502	539637

The defendants have no knowledge at this time of the time, place, purchaser, price and terms of each sale of the above motor vehicles.

(b) Mr. Frank Quinn

(c) The term "out of trust" as used in this litigation means the sale of motor vehicles by L. I. Reo without meeting its obligations under the various C.I.T. and White financing agreements, security agreements, consignment agreement promissory notes, chattel mortgages and trust receipts.

(Defendants' answers # 14a and #14c
to plaintiffs' interrogatories dated March 2, 1970)

- 495A

6. Set forth whether L. I. Reo was "out of trust" as that term is defined in defendants' answer 14(d) to plaintiffs' interrogatories dated December 1, 1969 prior to November 23, 1967 with respect to the following vehicles:

<u>Model No.</u>	<u>Serial No.</u>
E530-66	564293
DF402-66	566898
F830-66	566345
E502-66	567235
E503-66	567484
E502D-66	567580
D732D-67	567532
61 REO C502	539637

(Defendants' additional interrogatory
#6 dated March 20, 1970)

6. L. I. Reo was "out of trust" upon the vehicles listed in Defendants' Additional Interrogatory No. 6 at a time prior to the execution of the Agreement of November 23, 1966. L. I. Reo was not "out of trust" subsequent to November 23, 1966 upon any vehicles.

(Plaintiffs' answer # 6 to
defendants' additional interrogatories
dated May 1, 1970)

- 497A

EXHIBIT C

Financial Statements of L.I. Reo
(1960-1966)

(1959 not available)

(Exhibit C to plaintiffs'
answers to defendants'
interrogatories dated March 4, 1970)

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498A

EXHIBIT "A"

THE LONG ISLAND REO TRUCK CO.

BALANCE SHEET

NOVEMBER 30, 1960

ASSETS

CURRENT ASSETS

Cash on Hand		\$ 623.96	
Cash in Bank-Regular Account		19,872.27	
Cash in Bank-Special Account		8,624.28	\$ 29,120.51
Notes Receivable			
Accounts Receivable-On Truck Sales			
(Contra)	\$13,225.58		
Accounts Receivable-On Parts Sales	24,730.10	37,955.68	
Less: Allowance for Doubtful Accounts		1,723.90	36,231.78
Factory Claims and Retroactive			
Discounts Receivable			4,851.57
Inventory - Trucks - New (Contra)		37,203.41	
" - " - Used		13,773.63	
" - Parts		33,219.01	84,196.05
Prepaid Expenses			2,283.82
<u>TOTAL CURRENT ASSETS</u>			<u>156,683.73</u>

FIXED ASSETS

	Cost	Accumulated Depreciation	Net
Parts and Acces. Equipment	\$1,425.64	590.41	835.23
Office Furniture and Fixtures	1,813.29	657.40	1,155.89
Leasehold Improvements	5,816.92	1,534.52	4,282.40
<u>Totals</u>	<u>\$9,055.85</u>	<u>\$2,782.33</u>	
<u>NET FIXED ASSETS</u>			<u>6,273.52</u>

OTHER ASSETS

Finance Company Reserves	2,779.97	
Security Deposits	2,595.00	
Investment	8,500.00	
Loans and Advances	1,043.27	
<u>TOTAL OTHER ASSETS</u>		<u>14,918.24</u>
<u>TOTAL ASSETS</u>		<u>\$177,875.49</u>

LIABILITIES AND CAPITAL

CURRENT LIABILITIES

Notes Payable-(New Trucks Financed)-		
CIT (Contra)	\$43,232.07	
Notes Payable - Bank	4,297.32	
Accounts Payable - Reo Division	33,431.94	
Accounts Payable - Trade	32,900.93	
Customer Deposits and Credit Balances	9,379.42	
Taxes Accrued and Collected	10,718.90	
Accrued Expenses	1,792.65	
<u>TOTAL CURRENT LIABILITIES</u>		<u>\$135,753.23</u>
Notes Payable Bank - Non-Current		2,864.88
<u>TOTAL LIABILITIES</u>		<u>138,618.11</u>

PARTNERS' CAPITAL

Capital - January 1, 1960	46,110.37	
Less: Net Loss for Period		
(Per Exhibit "B")	6,852.99	
<u>CAPITAL - NOVEMBER 30, 1960</u>		<u>39,257.38</u>
<u>TOTAL LIABILITIES AND CAPITAL</u>		<u>\$177,875.49</u>

See Letter of Transmittal Attached.

499A

THE LONG ISLAND RED TRUCK COMPANY, INC.

BALANCE SHEET

SEPTEMBER 30, 1961

ASSETS

CURRENT ASSETS

Cash on Hand		\$	350.00	
Cash in Bank-Regular Account			62,454.23	
" " " -Special Account			17,058.89	
X Notes Receivable	\$	2,013.84		
X Less: Notes Receivable				
Discounted		2,013.84	-0-	
Accounts Receivable-On Truck				
Sales		8,873.09		
Accounts Receivable-On Parts				
Sales		28,345.95	35,219.04	
Less: Allowance For Doubtful				
Accounts			3,043.53	32,175.51
Factory Claims			728.15	
Pre Factory Discounts Receivable			1,363.60	2,091.75
Inventory-Trucks-New (Contra)			155,455.50	
" " -Used			14,846.49	
" " -Parts			39,349.50	310,653.61
Prepaid Expenses				1,901.88
<u>TOTAL CURRENT ASSETS</u>				<u>\$318,773.</u>

FIXED ASSETS

	Cost	Accumulated Depn. & Amortiz.	Net
Parts and Access. Equip't.	1,550.14	504.00	775.54
Office Furniture & Fixtures	3,553.83	1,345.26	2,208.57
Leasehold Improvements	7,639.00	2,021.23	5,617.77
Service Truck	1,101.50	303.79	797.71
<u>Totals</u>	<u>\$13,874.47</u>	<u>\$ 4,174.28</u>	<u>9,393.</u>

NET FIXED ASSETS

<u>INVESTMENTS-In Affiliated</u>	
Companies (At Cost)	11,200.

OTHER ASSETS

Finance Company Reserves	5,461.86
Loans and Advances - Officers	23.00
" " - Others	1,355.28
Security Deposits	195.00
Organization Expense	100.00
<u>TOTAL OTHER ASSETS</u>	<u>7,187.</u>
<u>TOTAL ASSETS</u>	<u>\$344,554.</u>

LIABILITIES AND CAPITAL

CURRENT LIABILITIES

Notes Payable (New Trucks Financed)-	
CIT (Contra)	\$103,420.37
Accounts Payable (New Trucks Financed)-	
Reo Division (Contra)	50,891.09
Notes Payable-LIACO Credit Corp.	154,411.40
Notes Payable-Bank	979.99
Notes and Accounts Payable-Reo-Parts	3,581.10
Accounts Payable - Trade	33,345.23
Customer Deposits and Credit Balances	58,977.73
New York State Franchise Tax	42,876.79
Taxes Payable - Other Than Income	330.98
Accrued Expenses	7,790.00
<u>TOTAL CURRENT LIABILITIES</u>	<u>2,377.93</u>
	<u>\$304,671.</u>

Capital Stock	41,200.00
Retained Earnings - December 1, 1960	-0-
Less: Net Loss for Period (Per Exh. "B")	(1,316.71) (1,316.71)
<u>CAPITAL</u>	<u>39,883.</u>
<u>TOTAL LIABILITIES AND CAPITAL</u>	<u>\$344,554.</u>

See Letter of Transmittal Attached

500A

EXHIBIT "B"

THE LONG ISLAND REO TRUCK CO.

INCOME STATEMENT

FOR THE PERIOD JANUARY 1, 1960 TO NOVEMBER 30, 1960

INCOME FROM SALES		Sales	Cost	Gross Profit
Trucks - New	\$	980,540.56	\$	915,020.78
" - Used		133,493.10		140,909.20
" - Used - Inventory Adj.				8,859.49
Parts		147,942.83		114,030.55
" - Bonus		-		(5,619.95)
Finance Reserve		2,336.82		-
Totals	\$	1,264,313.31	\$	1,173,200.07
Gross Profit				
				\$ 65,519.78
				(7,416.10)
				(8,859.49)
				33,912.23
				5,619.95
				2,336.82
				\$ 91,113.24
OPERATING EXPENSES				
Selling Expenses				
Sales Salaries & Commissions			7,126.16	
" Commissions-Outside			356.34	
Warranty Expenses			4,748.45	
Advertising and Promotion			3,894.95	
Travel and Entertainment			4,715.93	
Demonstration			210.00	
Total Selling Expenses			21,051.83	
GENERAL AND ADMINISTRATIVE EXPENSES				
Salaries - Parts Department			5,419.71	
" - Office			6,834.06	
Rent			7,200.00	
Light and Heat			864.86	
Telephone			4,620.93	
Legal and Auditing			1,926.92	
Office Supplies and Expense			867.28	
Insurance and Hospitalization			1,969.61	
Supplies and Maintenance			1,906.04	
Freight and Express (Net)			925.00	
Dues and Donations			158.73	
Taxes - Payroll			936.42	
" - Other			5,091.63	
Sundry Expenses			1,279.92	
Depreciation - Equipment			637.55	
Amortization of Leasehold			1,162.58	
Provision for Bad Debts			1,261.98	
Total General and Administrative Expenses			43,123.22	
TOTAL			64,175.05	
PARTNERS' SALARIES, COMMISSIONS AND DRAWING			30,003.51	
TOTAL EXPENSES				94,178.56
OPERATING LOSS				(3,065.32)
Other Income and Deductions				
Interest Expense			99.06	
Financing Costs			3,154.39	
Purchase Discounts			(65.80)	
				3,187.65
NET LOSS (Before N.Y.State Unincorporated Business Tax)				(6,252.97)
N.Y.State Unincorporated Business Tax				600.02
NET LOSS (After Taxes)				(\$ 6,852.99)

501A
THE LONG ISLAND RENT TRUCK COMPANY, INC.

EXHIBIT "B"

INCOME STATEMENT

FOR THE PERIOD DECEMBER 1, 1960 TO SEPTEMBER 30, 1961

	# Units	Sales	Cost	Gross Profit	Gross Profit %	% Of Sales
<u>INCOME FROM SALES</u>						
Trucks - New	90	\$993,800.67	\$922,768.40	\$71,032.27	7.1	
Trucks - Used	58	171,053.83	167,870.98	3,182.85		
" - Inventory Adj.		-	1,016.49	(1,016.49)		
Parts		163,286.63	126,997.68	36,288.95	22.3	
Parts - Bonus		-	(5,230.51)	5,230.51		
Finance Reserve		2,601.89	-	2,601.89		
Totals		\$1,530,025.02	\$1,215,223.06	\$314,801.96		8.8
<u>OPERATING EXPENSES</u>						
<u>Selling Expenses</u>						
Officers' Salaries & Commissions			34,250.46			
Sales Salaries & Commissions			10,535.09			
Sales Commissions - Outside			850.50			
Warranty Expense			3,199.38			
Travel			3,278.83			
Entertainment			1,583.56			
Advertising and Promotion			2,984.44			
Demonstration			1,230.59			
Total Selling Expenses			57,912.85			
<u>GENERAL AND ADMINISTRATIVE EXPENSES</u>						
Salaries - Parts Department			8,596.85			
Salaries - Office			11,348.31			
Rent			7,400.00			
Light and Heat			1,503.07			
Building Maintenance			1,093.21			
Supplies			346.67			
Freight and Trucking			1,335.26			
Telephone			5,662.55			
Legal and Accounting			1,633.00			
Office Supplies and Postage			1,409.33			
Insurance			2,676.34			
Group Insurance and Hospitalization			1,322.68			
Officers' Life Insurance			544.38			
Dues and Donations			33.00			
Taxes - Payroll			2,387.93			
" - Other			4,626.90			
Fundry Expenses			1,331.22			
Depreciation - Equipment			1,211.84			
Amortization of Leasehold Improvements			486.71			
Provision for Bad Debts			2,213.74			
Total General and Administrative Expenses			56,363.21			
TOTAL EXPENSES			114,276.07		8.6	
OPERATING PROFIT			3,425.91		.2	
<u>OTHER INCOME AND DEDUCTIONS</u>						
Interest & Financing Costs			4,411.94			
Loss: Purchase Discounts			.30	4,411.04	.3	
NET LOSS (Before Taxes)			(985.73)		(.1)	
New York State Franchise Tax			830.98			
NET LOSS (After Taxes)			(\$ 1,316.71)		(.1)	

See Letter of Transmittal Attached.

THE LONG ISLAND TRUCK COMPANY, INC.

BALANCE SHEET

SEPTEMBER 30, 1962

CURRENT ASSETS

CASH ON HAND

Cash in Bank-Regular Acct.

" " " -Special Acct.

Accts. Receiv.-Truck Sales

" " " -Parts "(Note 1)

Less: Allow. for Doubt. Accts.

Factory Claims

" Discounts Receiv.

Inventory-Trucks-New (Contra)

" " -Used

" -Parts

" -Work in Process

Prepaid Expenses

Fed. & State Tax Refunds Receiv.

TOTAL CURRENT ASSETS

ASSETS

\$ 250.00

10,040.09

2,010.36

\$48,401.32

\$1,990.75

\$100,452.07

5,858.61

94,593.46

3,305.52

2,061.31

5,570.03

102,316.51

54,237.64

61,580.67

308.18

270,463.00

4,830.65

1,398.01

\$398,155.

FIXED ASSETS

Part & Access. Equip't.

Office Furniture & Fixtures

Leasehold Improvements

Shop Equipment

Service Truck

Totals

Cost

1,350.14

5,024.46

9,079.63

3,592.46

1,101.50

\$20,578.67

Accumulated Depreciation

952.01

2,055.34

2,739.73

1,117.62

705.64

\$7,600.34

Net

398.13

2,969.12

6,340.20

2,474.84

395.86

12,778.

11,500.

INVESTMENTS-In Affil. Companies (At Cost) (Note 2)

OTHER ASSETS

Finance Company Reserves

Loans & Advances-Officers

" " " -Other

Security Deposits

Goodwill (Note 3)

Organization Expense

TOTAL OTHER ASSETS

TOTAL ASSETS

11,245.29

903.48

262.40

470.00

6,000.00

114.00

18,895.

\$441,428.

LIABILITIES AND CAPITAL

CURRENT LIABILITIES

Notes Pay. (New Trucks Financed)-

CIT (Contra)

\$113,424.56

Accts. Pay. (New Trucks Financed)-

Reo Division (Contra)

65,353.97

\$180,783.53

Notes Pay. (Used Trucks Financed)-

CIT (Contra)

10,400.00

Notes Pay.-LISCO Credit Corp.

419.95

Notes Pay.-Bank-Installment Loans

8,953.20

Notes Pay.-Reo-Installments-Parts

34,269.50

Accts. Pay.-Reo-Parts

52,768.44

87,037.94

Accts. Pay.-Trade

63,964.27

Customer Deposits & Credit Balances

7,408.00

Fed. Income Tax-Current

610.85

N.Y.S. Franchise Tax-Current

590.07

Taxes Pay.-Other Than Income

0,540.47

Accrued Expenses

4,568.30

TOTAL CURRENT LIABILITIES

Notes Pay. - Bank - Non-Current

374,282.

TOTAL LIABILITIES

11,609.

385,892.

Capital Stock

55,200.00

Retained Earnings October 1, 1961 (Deficit)

(1,316.71)

Add: Net Income for Period (Per Exh. "E")

1,653.25

336.54

CAPITAL

55,536.

TOTAL LIABILITIES AND CAPITAL

\$441,428.

See Letter of Transmittal
Attached.

503A

THE LONG ISLAND RED TRUCK COMPANY, INC.

EXHIBIT "B"

INCOME STATEMENT

FOR THE PERIOD OCTOBER 1, 1961 TO SEPTEMBER 30, 1962

	# Units	Sales	Cost	Gross Profit	Gross Profit %	% Of Sales
INCOME FROM SALES						
Trucks - New	149	31,391,059.85	31,301,531.16	89,528.69	6.4	
Trucks - Used	63	207,275.46	211,314.75	(4,039.29)	-	
Parts - Counter		326,548.84	179,513.39	47,035.43	20.7	
Parts - Shop		14,326.55	9,784.55	4,542.00	31.7	
Labor		11,714.11	4,141.84	7,572.27	64.6	
Sublet		3,612.55	2,675.15	937.40	-	
Internal & Misc.		10,188.01	8,685.73	1,502.28	-	
Retrospective Disct.-Parts		-	(8,614.50)	8,614.50	-	
Finance Reserve		5,783.43	-	5,783.43	-	
Totals		1,870,581.79	1,709,531.07	161,050.72		8.6
OPERATING EXPENSES						
Selling Expenses						
Officers' Salaries & Commissions			\$31,522.47			
Sales Salaries & Commissions			15,065.50			
Sales Commissions - Outside			455.00			
Travel			3,076.73			
Entertainment			4,004.15			
Advertising & Promotion			6,594.39			
Total Selling Expenses			60,628.14			
Payroll & Commissions - Other						
Parts Dept.-Officers' Salary & Commissions			13,303.98			
-Other Salaries			11,533.69			
Serv. Dept.-Officers' Salary & Commissions			3,225.30			
Office -Salaries			15,673.71			
Total Payroll & Commissions - Other			43,736.68			
GENERAL & ADMINISTRATIVE EXPENSES						
Rent			11,400.00			
Light & Heat			1,488.62			
Building Maintenance			1,324.63			
Supplies			554.70			
Freight & Express			1,849.49			
Telephone			7,240.63			
Legal & Accounting			3,020.33			
Office Supplies & Postage			3,211.34			
Insurance - Regular			3,621.34			
" - Hospitalization & Group Life			1,399.60			
" - Officers' Life			544.38			
Dues & Subscriptions			94.75			
Taxes - Payroll			3,579.93			
" - Other			5,162.69			
Sundry Expenses			562.09			
Depreciation - Equipment			1,231.69			
Amortization of Leasehold Improvements			718.50			
Total General & Administrative Expenses			47,019.68			
TOTAL EXPENSES				151,073.32		8.
OPERATING PROFIT				10,403.40		
OTHER INCOME - Interest & Misc.						
TOTAL INCOME				11,561.38		
OTHER DEDUCTIONS - Interest & Financing Costs						
				9,104.61		
NET INCOME (Before Taxes)				2,860.17		
New York State Franchise Tax			596.07			
Federal Income Tax			610.85			
				1,206.92		
NET INCOME (After Taxes)				\$ 1,653.25		

See Letter of Transmittal Attached.

THE LONG ISLAND BUS TRUCK CO., INC.

BALANCE SHEET

SEPTEMBER 30, 1963

504A

ASSETS

CURRENT ASSETS

Cash on Hand		\$	350.00
Cash in Bank-Regular Acct.			2,835.84
Cash in Bank-Special Accts.			3,775.78
Accts. Receiv. - Truck Sales	\$32,298.00		
Accts. Receiv. - Parts (Note 1)	42,267.85	\$74,845.85	
Less: Allow. for Doubt. Accts.		4,678.63	
Other Receivables			69,087.23
Factory Claims			434.61
Factory Discounts Receivable			1,539.81
Inventory Trucks-New(Contra)			1,635.03
Inventory Trucks-Used(Contra)			73,305.23
Inventory Parts (Note 2)			112,207.00
Inventory Labor-Work in Process			54,748.03
Inventory-Embroid			310.78
Inventory Oil and Grease			140.00
Prepaid Expenses			144.00
			2,899.41

TOTAL CURRENT ASSETS

\$324,410.47

FIXED ASSETS

	<u>COST</u>	<u>ACCUMULATED DEPRECIATION</u>	<u>BOOK VALUE</u>
Parts & Access. Equipment	\$ 1,550.13	\$ 1,116.87	\$ 433.26
Office Furniture & Fixt.	5,932.03	2,781.32	3,150.71
Shop Equipment	3,717.46	1,570.29	2,147.17
Vehicles in Company Use	7,598.53	815.28	6,783.25
Leasehold Improvements	10,533.17	3,657.16	6,876.01
<u>TOTALS</u>	<u>\$29,331.32</u>	<u>\$ 9,951.02</u>	

INVESTMENTS-In Affil. Co.s. (At Cost)(Note 3)

19,515.37
11,500.00

OTHER ASSETS

Finance Company Reserves		20,921.23
Loans & Advances		75.00
Security Deposits		400.00
Goodwill (Note 4)		6,000.00
Organization Expense		78.00

TOTAL OTHER ASSETS

27,534.23

TOTAL ASSETS

\$382,959.67

LIABILITIES AND CAPITAL

CURRENT LIABILITIES

Notes Pay. (Truck Fin.) CIT(Contra)	\$194,734.38
Notes Pay.-CIT Install.-Co. Car	1,738.80
Notes Pay.-Bank-Installment Loans	9,863.20
Notes Pay.-Bus-Installments-Parts	10,620.00
Accts. Pay. Bus-Parts	\$7,690.28
Accts. Pay.-Trade	73,005.41
Customer Deposits & Credit Bal.	10,030.21
Taxes Pay.-Other than Income	8,458.45
Accrued Expenses	4,743.37
New York Franchise Taxes	751.03

TOTAL CURRENT LIABILITIES

\$351,287.06

Notes Payable-Non-Current

7,204.50

Due to Officers

1,872.52

TOTAL LIABILITIES

9,077.02

Capital Stock

55,200.00

Retained Earnings-Oct. 1, 1963(Adj.)

\$ 240.89

Less: Net Loss for Period(Per Exh. "B")

(32,845.32)

(32,604.43)

CAPITAL

22,595.57

TOTAL LIABILITIES AND CAPITAL

\$382,959.67

See Letter of Transmittal Attached.

505A

EXHIBIT "D"

THE LONG ISLAND RED TRUCK CO., INC.
INCOME STATEMENT

FOR THE PERIOD OCTOBER 1, 1962 TO SEPTEMBER 30, 1963

	<u>Sales</u>	<u>Cost</u>	<u>Gross Profit</u>	<u>Gross Profit %</u>	<u>% of Sales</u>
INCOME FROM SALES					
Trucks-New	\$1,048,573.50	\$1,553,587.28	\$ 04,095.28	8.8	
Trucks-Used	495,781.71	497,014.35	(1,232.64)	.2	
Used Truck-Inv. Adj.	-0-	21,581.18	(21,581.18)		
Parts-Counter & Shop	231,345.06	164,403.00	66,942.06	28.7	
Parts-Internal	31,659.05	27,587.43	4,071.62	12.8	
Labor-Customers	82,909.23	44,261.50	38,647.73	46.6	
Labor-Internal	35,170.55	10,249.63	24,920.92	70.3	
Sublet-Customers	11,539.00	9,839.59	1,699.41	13.9	
Sublet-Internal	3,627.09	3,613.43	13.66		
Oil and Grease	4,212.49	2,704.07	1,508.42		
Extensive Disc.-Parts	-0-	(6,525.05)	6,525.05		
Finance Reserve	9,675.04	-0-	9,675.04		
Less: Sales Disc. Coll.	(197.67)	-0-	(197.67)		
Totals	\$2,844,255.57	\$2,837,473.34	\$6,782.23		8.1
OPERATING EXPENSES					
Selling Expenses					
Sal. Sal. & Comm.	\$36,087.85				
Sales Sal. & Comm.	14,053.23				
Salon Comm.-Outside	1,835.00				
Travel	3,385.87				
Entertainment	3,310.29				
Advertising & Promotion	4,009.23				
Warranty Expense	4,189.49				
Total Selling Expenses		\$67,450.05			
Payroll & Comm.-Other					
Part. Dept.-Off. Sal. & Comm.	13,069.07				
-Other Sal.	14,105.01				
Serv. Dept.-Off. Sal. & Comm.	26,101.00				
Unapp. Time & Vac.	6,072.33				
Office Salaries	20,168.61				
Total Payroll & Comm.-Other		78,666.05			
General & Adminis. Exp.					
Lease	20,400.00				
Light and Heat	3,735.49				
Building Maintenance	1,783.07				
Supplies	3,083.20				
Freight and Express	1,120.63				
Telephone	7,211.89				
Legal & Accounting	4,528.00				
Office Supplies & Postg.	3,265.12				
Insurance-Regular	7,223.91				
Insur.-Officers' Life	523.15				
Insur.-Emp. & Group Life	3,592.15				
Dues & Subscriptions	141.75				
Taxes-Payroll	9,116.84				
Taxes-Other	8,359.23				
Sundry Expenses	268.14				
Depreciation-Equipment	2,240.22				
Amort. of Leasehold Impr.	627.43				
Bad Debts	3,109.08				
Total Gen. & Adminis. Exp.		81,355.10			
TOTAL EXPENSES			227,472.10	8.9	
				(20,655.73)	(8.8)
				361.05	
				(20,294.71)	
Other Deductions-Interest & Financing Costs				12,097.67	.5
NET LOSS (Before Taxes)				(32,222.33)	(1.3)
New York State Franchise Tax				453.00	
NET LOSS (After Taxes)				\$ (32,245.38)	(1.3)

See Letter of Transmittal
Attached.

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THE LONG ISLAND RED TRUCK CO., INC.

BALANCE SHEET

SEPTEMBER 30, 1964

ASSETS

CURRENT ASSETS

Cash on Hand		\$	320.75
Cash in Banks			3,781.12
Accts. Rec. - Truck Sales	\$29,483.87		
Accts. Rec. - Parts (Note 1)	66,338.22	\$	95,871.79
Less: All. for Doubt. Accts.			4,957.77
Other Receivables			90,014.02
Factory Claims			983.44
Factory Disc. Receiv.			3,950.48
Inventory Trucks - New (Contra)	31,296.54		2,773.59
Inventory Trucks - Used (Contra)	137,180.89		
Inventory Parts (Note 2)	40,457.29		
Inven. Labor - Work in Process	112.23		
Inventory - Sublet	87.48		
Inventory - Oil & Grease	423.00		
Total Inventories			218,559.50
Prepaid Expenses			7,484.21

TOTAL CURRENT ASSETS

\$327,750.11

FIXED ASSETS

	COST	ACCUMULATED DEPRECIATION	NET
Parts & Acc. Equip.	\$ 1,616.14	\$ 1,287.85	\$ 328.29
Off. Furn. & Fixtures	14,034.67	3,571.75	10,462.92
Shop Equipment	3,796.46	2,035.78	1,760.68
Vehicles Co. Use	10,421.44	2,103.86	8,317.58
Leasehold Improvements	10,538.17	4,467.50	6,070.67
TOTALS	\$40,406.88	\$13,466.55	26,937.33

INVESTMENTS - In Affil. Co. (At Cost) (Note 3)

11,500.00

OTHER ASSETS

Finance Co. Reserves	27,864.94
Security Deposits	423.00
Goodwill (Note 4)	6,000.00
Organization Expense	42.00

TOTAL OTHER ASSETS

34,331.94

TOTAL ASSETS

\$400,519.38

LIABILITIES AND CAPITAL

CURRENT LIABILITIES

Notes Pay. - (Truck Financ.) CIT (Contra)	\$144,800.91
Notes Pay. (CIT Install. - Co. Car)	1,992.72
Notes Pay. - Bank - Install. - Loans	3,330.59
Notes Pay. - Lirco Credit Corp. - Demand Note	10,000.00
Notes Pay. - Lirco Credit Corp. - Installments	924.60
Notes Payable - Other	10,139.13
Notes Pay. - Leo - Install. - Parts	36,013.00
Accts. Pay. - Leo - Parts	54,101.39
Accts. Pay. - Trade	55,020.49
Customer Deposits & Credit Bal.	7,044.84
Taxes Pay. - Other than Income	6,159.41
Accrued Expenses	5,542.64
N.Y.S. Franchise Tax	704.61

TOTAL CURRENT LIABILITIES

\$337,664.23

Notes Payable - Non-Current

12,443.95

Due to Officers

631.68

13,078.63

TOTAL LIABILITIES

350,742.83

CAPITAL

Capital Stock 67,200.00

Ret. Earnings (Deficit) Oct. 1, 1963 \$(32,604.93)

Add: Ret. Inc. for Period (Per Exh. B) 13,181.51 (17,423.48)

CAPITAL

49,776.52

TOTAL LIABILITIES AND CAPITAL

\$400,519.38

See Letter of Transmittal Attached.

BOROD & KRAUS
Certified Public Accountants

507A

THE LONG ISLAND RENT TRUCK CO., INC.

STATEMENT OF INCOME

FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1965

SCHEDULE "B-1"

SELLING EXPENSES

Officers' Salaries & Commissions	\$17,164.53
Sales Salaries & Commissions	8,030.63
Sales Commissions-Outside	13,059.23
Travel	2,552.10
Entertainment	3,193.74
Advertising & Promotion	6,257.97
Warranty Expense	3,901.16

TOTAL SELLING EXPENSES

\$ 54,208.40

SCHEDULE "B-2"

PAYROLL AND COMMISSIONS-OTHER

Parts Dept.-Officers' Sal. & Comm.	\$17,889.93
-Other Salaries	25,507.77
Serv. Dept.-Officers' Sal. & Comm.	23,155.82
-Supervision	10,225.35
Office -Salaries	17,027.77
Idle Time, Vacations and Holidays	15,719.23

TOTAL PAYROLL AND COMMISSIONS-OTHER

\$109,525.90

SCHEDULE "B-3"

GENERAL AND ADMINISTRATIVE EXPENSES

Rent	\$29,725.00
Light and Heat	4,575.51
Building Maintenance	6,458.52
Supplies	3,070.04
Freight and Express	2,022.93
Telephone	8,092.27
Legal and Accounting	5,703.95
Office Supplies and Postage	5,687.60
Insurance-Regular	6,000.57
Insurance-Officers' Life	376.41
Insurance-Insur. & Group Life	3,376.23
Pension Plan	3,955.77
Dues and Subscriptions	734.83
Taxes-Payroll	9,773.43
Taxes-Other	9,116.48
Sundry Expenses	1,566.39
Depreciation-Equipment	5,238.57
Amortization of Leasehold Improvements	929.40
Bad Debts	4,539.29

TOTAL GENERAL AND ADMINISTRATIVE
EXPENSES

\$112,063.29

See Letter of Transmittal Attached.

508A

BALANCE SHEET

SEPTEMBER 30, 19

ASSETSCURRENT ASSETS

Cash on Hand		\$	430.00
Cash in Bank			2,795.60
Contracts in Transit			28,460.20
Accts. Receiv.-Trucks			13,940.00
Accts. Receiv.-Parts (Note 1)	\$ 74,502.35		
Less: Allowance for Doubtful Accts.	8,842.23		65,660.12
Other Receivables			3,341.02
Factory Claims			7,038.82
Inventory Trucks-New (Contra) (Note 2)	222,100.54		
Inventory Trucks-Used (Contra) (Note 2)	212,853.71		
Inventory Parts (Note 3)	74,363.53		
Inventory-Labor-Work in Process	1,087.87		
Inventory-Sublet	745.12		
Inventory-Oil & Grease	711.17		
Total Inventories			511,861.94
Prepaid Expenses & Taxes			5,786.58

TOTAL CURRENT ASSETS

\$639,313.98

FIXED ASSETS

	COST	ACCUMULATED DEPRECIATION	NET
Parts & Access. Equipmt.	\$ 1,618.14	\$ 1,454.32	\$ 161.82
Office Furn. & Fixtures	16,544.52	5,850.45	10,694.07
Shop Equipment	5,721.81	2,690.82	3,030.99
Vehicles for Co. Use	9,107.44	3,495.03	5,612.41
Leasehold Improvements	12,282.17	5,396.90	6,885.27

TOTAL FIXED ASSETS

\$45,273.08

\$ 18,887.52

26,384.56

INVESTMENTS-in Affil. Co.s (At Market Value) (Note 4)

15,000.00

OTHER ASSETS

Finance Co. Reserves		30,303.59
Finance Co. Holdback		4,100.00
Security Deposits		725.00
Goodwill (Note 5)		6,000.00
Organization Expense		6.00
Cash in Escrow Account	4,239.20	
Less: Due to Customer	4,239.20	-

TOTAL OTHER ASSETS

41,134.59

TOTAL ASSETS

\$721,833.13

See Letter of Transmittal Attached.

BOROD & KRAUS
Certified Public Accountants

LIABILITIES AND CAPITALCURRENT LIABILITIES

Notes Pay. (Truck Fin.) CIT (Contra)-New	\$200,378.20
Notes Pay. (Truck Fin.) CIT (Contra)-Used	140,848.00
Notes Pay. -(CIT Install.) Co. Car	1,992.72
Notes Pay. -Lirco Credit Corp. - Demand Note	22,484.65
Notes Pay. -Lirco Credit Corp. - Installments	1,508.64
Notes Pay. -Other-Installments	9,839.12
Accts. Pay. -Reo- New Trucks (Contra)	46,842.95
Accts. Pay. -Reo-Parts	78,860.41
Accts. Pay. -Trade	113,872.98
Customer Deposits and Credit Balances	36,417.44
Taxes Pay. -Other Than Income	7,367.37
Accrued Expenses	3,633.80
New York Franchise Tax	600.10
Employee Funds	60.00

TOTAL CURRENT LIABILITIES

\$664,726.38

OTHER LIABILITIES

Notes Pay. -Non-Current - Installments	8,544.55
Due to Officers	563.82

TOTAL OTHER LIABILITIES9,108.37TOTAL LIABILITIES

673,834.75

CAPITAL

Capital Stock	70,200.00
Deficit-Oct. 1, 1964	\$(17,423.48)
Add: Addl. Federal Income Tax-Prior Years	461.22
Net Loss per Exhibit "B"	<u>7,816.92</u>
Deficit-Sept. 30, 1965	(25,701.62)
Excess over Cost of Fair Market Value of Investments	<u>3,500.00</u>

TOTAL CAPITAL47,998.38TOTAL LIABILITIES AND CAPITAL\$721,833.13

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THE LONGISLAND RED TRUCK CO., INC.

509A

STATEMENT OF INCOME

FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1965

	<u>SALES</u>	<u>COST</u>	<u>GROSS PROFIT</u>	<u>GROSS PROFIT %</u>	<u>% OF SALES</u>
<u>INCOME FROM SALES</u>					
Trucks-New	\$1,187,235.57	\$1,103,133.95	\$ 84,081.62	7.1	
Trucks-Body	599,932.30	509,932.30	-	-	
Trucks-Used	393,146.85	420,982.39	(25,835.54)	(6.5)	
Parts-Counter and Shop	341,197.61	242,208.87	98,978.74	29.0	
Parts-Internal	42,016.99	31,022.72	10,994.27	26.2	
Labor-Customers	125,536.04	62,506.42	63,029.62	51.4	
Labor-Internal	61,657.20	29,766.52	31,890.68	51.7	
Sublet-Customers	15,313.63	13,129.07	2,114.56	13.8	
Sublet-Internal	5,455.13	5,039.45	424.68	7.8	
Oil and Grease	6,193.35	4,656.94	1,536.41	24.8	
Retroactive Discount- Parts	-	(1,843.74)	1,843.74	-	
Finance Reserve	17,518.65	-	17,518.65	-	
Sales Discounts & Allowances	(111.94)	-	(111.94)	-	
<u>TOTALS</u>	<u>\$2,710,131.32</u>	<u>\$2,429,615.09</u>	<u>\$289,515.49</u>		<u>10.7</u>
<u>OPERATING EXPENSES</u>					
Selling Expenses ("B-1")		\$ 54,298.40			
Payroll and Commissions- Other ("B-2")		109,525.90			
General and Administrative Expenses ("B-3")		<u>112,063.29</u>			
<u>TOTAL OPERATING EXPENSES</u>			<u>275,887.59</u>		<u>10.2</u>
<u>OPERATING PROFIT</u>			<u>13,627.90</u>		<u>.5</u>
Other Income-Interest and Miscellaneous			<u>882.69</u>		<u>-</u>
<u>TOTAL INCOME</u>			<u>14,510.59</u>		<u>.5</u>
Other deductions-Interest and Financing Costs			<u>21,737.41</u>		<u>.8</u>
<u>NET LOSS (BEFORE TAXES)</u>			<u>(7,216.22)</u>		<u>(.3)</u>
New York State Franchise Tax			<u>600.10</u>		<u>-</u>
<u>NET LOSS (AFTER TAXES)</u>			<u>\$ (7,816.92)</u>		<u>(.3)</u>

See Letter of Transmittal Attached.

BOROD & KRAUS
Certified Public Accountants

510A

LONG ISLAND RED TRUCK CO., INC.

STATEMENT OF INCOME

FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1966

	<u>NEW YORK</u>	<u>HAUPPAGUE</u>	<u>TOTAL</u>	<u>%</u>
SALES	\$1,975,707.10	\$985,918.48	\$2,961,625.58	100.0%
COST OF SALES	<u>1,715,127.18</u>	<u>877,620.88</u>	<u>2,592,748.06</u>	<u>87.5</u>
GROSS PROFIT (B-1, B-2)	<u>260,579.92</u>	<u>108,297.60</u>	<u>368,877.52</u>	<u>12.5</u>
<u>OPERATING EXPENSES</u>				
Selling Expenses (D-3)	58,572.25	35,496.19	94,068.44	3.2
Payroll & Commissions Other (B-4)	90,208.29	51,949.67	142,157.96	4.8
General & Administrative Expenses (B-5)	<u>106,669.63</u>	<u>48,811.00</u>	<u>155,480.63</u>	<u>5.2</u>
TOTAL OPERATING EXPENSES	<u>255,450.17</u>	<u>136,256.86</u>	<u>391,707.03</u>	<u>13.2</u>
OPERATING PROFIT (LOSS)	<u>\$ 5,129.75</u>	<u>\$ (27,959.26)</u>	<u>(22,829.51)</u>	<u>(.7)</u>
Add: Other Income Finance Reserves Interest Earned		\$25,996.66 <u>336.15</u>	<u>26,332.81</u>	<u>.8</u>
			3,503.30	.1
Less: Other Deductions Interest & Financing Costs			<u>31,027.49</u>	<u>1.0</u>
NET LOSS (BEFORE TAXES)			<u>(27,524.19)</u>	<u>(.9)</u>
Estimated New York State and New York City Franchise Taxes			<u>508.72</u>	<u>-</u>
NET LOSS FOR PERIOD			<u>\$ (28,032.91)</u>	<u>(.9)%</u>

See Letter of Transmittal Attached.

BOROD & KRAUS
CERTIFIED PUBLIC ACCOUNTANTS

SEPTEMBER 30, 19

- 511A

ASSETSCURRENT ASSETS

Cash on Hand		\$ 350.00
Cash in Bank-Regular Account		1,047.41
Cash in Bank-Special Accts.		8,089.15
Mortgage Receivable		3,000.00
N.Y.C. Genl. Business Tax Refund Receivable		3,825.59
Accts. Receiv-Truck Sales		64,167.60
Accts. Receiv.-Parts (Note 1)	\$106,515.69	
Less: Allow. for Doubtful Accts.	10,864.61	95,651.08
Factory Claims		15,919.70
Inventory Trucks-New (Contra)	166,694.38	
Inventory Trucks-Used (Contra)	160,150.47	
Inventory Parts	126,001.85	
Inventory-Labor-Work in Process	4,561.82	
Inventory-Sublet	3,849.91	
Inventory-Oil & Grease	1,472.17	
Total Inventories		462,730.60
Prepaid Expenses		5,619.43

TOTAL CURRENT ASSETS

\$660,400.56

FIXED ASSETS

	COST	ACCUMULATED DEPRECIATION	NET
Parts & Access. Equipmt.	\$ 6,636.14	\$ 1,451.27	\$ 124.87
Office Furn. & Fixt.	1,367.87	8,088.12	9,279.75
Shop Equipment	5,129.03	3,444.64	2,684.42
Vehicles for Co. Use	9,904.24	3,776.19	6,128.05
Leasehold Improvements	4,843.41	6,629.13	8,214.28

TOTAL FIXED ASSETS

\$9,860.72

\$ 23,429.35

26,431.37

INVESTMENTS-in Affil Co.s. (Note 2)

18,000.00

OTHER ASSETS

Finance Co. Reserves	53,029.44
Finance Co. Holdback	1,500.00
Loans & Advances-Off. & Employ.	2,777.81
Loan Receiv.-Lirco Enterprises, Inc.	1,500.00
Security Deposits	1,317.18
Goodwill (Note 3)	6,000.00

TOTAL OTHER ASSETS

66,124.43

TOTAL ASSETS

\$770,956.36

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See Letter of Transmittal Attached.

LIABILITIES AND CAPITAL

CURRENT LIABILITIES

Notes Pay. (Truck Fin.) CIT (Contra)-New	\$285,428.76
Notes Pay. (Truck Fin.) CIT (Contra)-Used	151,566.50
Notes Pay. (CIT Install.) Co. Car	2,055.60
Notes Pay.-Reo-Parts	24,240.00
Notes Pay.-Lirco Credit Corp.- Demand Note	3,030.00
Notes Pay.-Lirco Credit Corp.- Floor Plan Financing	19,984.65
Notes Pay.-Lirco Credit Corp.- Installments	1,046.34
Notes Pay.-Other Installments	12,859.62
Accts. Pay.-Reo-Parts	86,495.47
Accts. Pay.-Trade	100,154.37
Customer Deposits and Credit Balance	34,705.24
Taxes Pay.-Other Than Income	9,574.67
Accrued Expenses	7,645.12
New York Franchise Tax	282.47
Union Dues Payable	655.00

TOTAL CURRENT LIABILITIES

\$739,723.81

OTHER LIABILITIES

Notes Pay.-Reo-Current-Installments	5,967.08
-------------------------------------	----------

TOTAL LIABILITIES

745,690.89

DEFERRED CREDITS- Deferred Interest Income

300.00

CAPITAL

Capital Stock		
Class A	\$51,200.00	
Class B	24,000.00	75,200.00
Deficit-October 1, 1935	(25,701.62)	
Add: Net Loss per Exh. "B"	(28,032.91)	(53,734.53)
Excess over Cost of Fair Market Value of Investments (Note 2)		3,500.00

TOTAL CAPITAL

24,965.47

TOTAL LIABILITIES AND CAPITAL

\$770,956.36

512A

LONG ISLAND FRO TRUCK CO., INC.

EXHIBIT "B"
SCHEDULES

STATEMENT OF INCOME

FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1966

SCHEDULE "B-4"

PAYROLL AND COMMISSIONS-OTHER

	NEW YORK	HAUPPAGUE	TOTAL
Parts & Service-New York			
Officer's Salary	\$17,724.77	\$ 1,969.41	\$ 19,694.18
Parts & Service-Hauppague			
Officer's Salary		16,800.00	16,800.00
Parts Salaries	26,914.69	14,161.53	41,076.22
Service Supervision	21,111.91	5,265.27	26,377.18
Office Salaries	15,916.52	5,305.51	21,222.03
Service Department			
Idle Time, Vacations & Holidays	7,357.40	7,814.95	15,172.35
Christmas Bonus	1,183.00	633.00	1,816.00
TOTAL PAYROLL AND COMMISSIONS-OTHER	\$90,208.29	\$51,949.67	\$142,157.96

SCHEDULE "B-5"

GENERAL AND ADMINISTRATIVE EXPENSES

	NEW YORK	HAUPPAGUE	TOTAL
Rent	\$ 24,702.80	\$18,000.00	\$ 42,702.80
Light and Heat	3,957.59	1,565.61	5,523.20
Building Maintenance	8,138.59	5,267.08	13,405.67
Supplies	2,486.57	741.12	3,227.69
Freight and Express	1,957.55	652.52	2,610.07
Telephone	9,351.90	1,748.84	11,100.74
Legal and Accounting	6,370.02	2,123.34	8,493.36
Office Supplies & Postage	6,127.27	2,042.43	8,169.70
Insurance-Regular	7,384.81	2,461.61	9,846.42
Insurance-Officers' Life	883.73	441.87	1,325.60
Insurance-Hosp. & Group Life	2,202.09	734.03	2,936.12
Pension Plan	4,676.03	2,630.27	7,306.30
Dues and Subscriptions	572.40	190.80	763.20
Taxes-Payroll	10,170.57	5,720.95	15,891.52
Taxes-Other	3,112.59	-	3,112.59
Sundry Expenses	961.38	320.46	1,281.84
Depreciation-Equipment	4,868.64	540.96	5,409.60
Amortization of Leasehold Improv.	616.12	616.11	1,232.23
Bad Debts	4,172.48	1,390.83	5,563.31
Credit & Collection Expense	771.50	257.17	1,028.67
Union Welfare	3,185.00	1,365.00	4,550.00
TOTAL GENERAL AND ADMINISTRATIVE EXPENSES	\$106,669.63	\$48,811.00	\$155,480.63

See Letter of Transmittal Attached.

BOROD & KRAUS
CERTIFIED PUBLIC ACCOUNTANTS

EXHIBIT "B"
SCHEDULES

LONG ISLAND TRUCK CO., INC.

513A

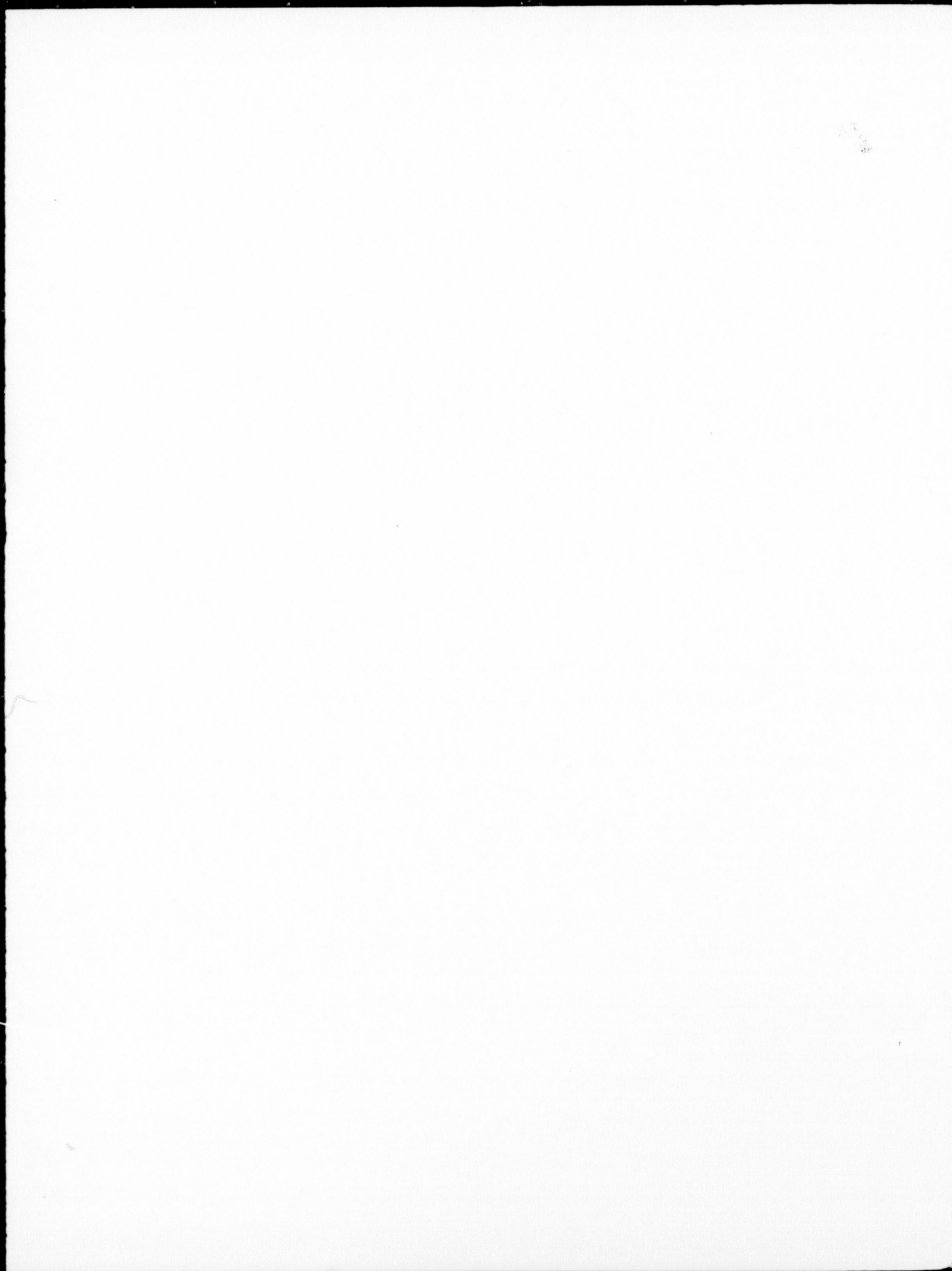
STATEMENT OF INCOME

FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1966

	NEW YORK	HAUPPAGUE	TOTAL
<u>PAYROLL AND COMMISSIONS-OTHER</u>			
Driver's & Service-New York			
Officer's Salary	\$17,724.77	\$ 1,969.41	\$ 19,694.18
Driver's & Service-Hauppague			
Officer's Salary	-	16,800.00	16,800.00
Driver's Salaries	26,914.69	14,161.53	41,076.22
Service Supervision	21,111.91	5,265.27	26,377.18
Office Salaries	15,916.52	5,305.51	21,222.03
Service Department			
Idle Time, Vacations & Holidays	7,357.40	7,814.95	15,172.35
Christmas Bonus	1,183.00	633.00	1,816.00
<u>TOTAL PAYROLL AND COMMISSIONS-OTHER</u>	<u>\$90,208.29</u>	<u>\$51,949.67</u>	<u>\$142,157.96</u>
<u>EXPENSES</u>			
<u>GENERAL AND ADMINISTRATIVE</u>			
Light and Heat	\$ 24,702.80	\$18,000.00	\$ 42,702.80
Building Maintenance	3,957.59	1,565.61	5,523.20
Utilities	8,138.59	5,267.08	13,405.67
Freight and Express	2,486.57	741.12	3,227.69
Telephone	1,957.55	652.52	2,610.07
Legal and Accounting	9,351.90	1,748.84	11,100.74
Office Supplies & Postage	6,370.02	2,123.34	8,493.36
Insurance-Regular	6,127.27	2,042.43	8,169.70
Insurance-Officers' Life	7,384.81	2,461.61	9,846.42
Insurance-Mosp. & Group Life	883.73	441.87	1,325.60
Life Insurance Plan	2,202.09	734.03	2,936.12
Life Insurance Subscriptions	4,676.03	2,630.27	7,306.30
Life Insurance Payroll	572.40	190.80	763.20
Life Insurance Other	10,170.57	5,720.95	15,891.52
Life Insurance Expenses	3,112.59	-	3,112.59
Life Insurance Equipment	961.38	320.46	1,281.84
Life Insurance Liquidation of Leasehold Improv.	4,868.64	540.96	5,409.60
Life Insurance Debts	616.12	616.11	1,232.23
Life Insurance & Collection Expense	4,172.48	1,390.83	5,563.31
Life Insurance Welfare	771.50	257.17	1,028.67
Life Insurance	3,185.00	1,365.00	4,550.00
<u>GENERAL AND ADMINISTRATIVE EXPENSES</u>	<u>\$106,669.63</u>	<u>\$48,811.00</u>	<u>\$155,480.63</u>

Copy of Transmittal Attached.

BOROD & KRAUS
CERTIFIED PUBLIC ACCOUNTANTS



- 514A
LONG ISLAND FEO TRUCK CO., INC.

EXHIBIT "B"
SCHEDULES

STATEMENT OF INCOME

FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1966

	SALES	COST	GROSS PROFIT	% OF SALES
<u>SCHEDULE "B-1"</u>				
<u>INCOME FROM SALES-NEW YORK</u>				
Trucks-New	\$ 756,840.87	\$ 706,271.12	\$ 50,569.75	6.68
Trucks-Bodies	307,628.30	307,628.30	-	-
Trucks-Used	329,046.88	353,428.73	(24,381.90)	(7.41)
Parts-Counter & Shop	293,921.05	205,702.34	93,218.71	31.19
Parts-Internal	39,762.48	35,152.49	4,609.99	11.59
Labor-Customers	137,947.31	53,655.32	84,291.99	61.10
Labor-Internal	75,635.18	31,257.09	44,378.09	58.67
Sublet-Customers	18,283.15	12,239.63	6,043.52	33.05
Sublet-Internal	4,834.49	4,491.29	343.20	7.10
Oil and Grease	7,063.63	5,300.82	1,762.81	24.96
Sales Discounts & Allow.	(256.24)	-	(256.24)	-
<u>TOTAL</u>	<u>\$1,975,707.10</u>	<u>\$1,715,127.18</u>	<u>\$260,579.92</u>	<u>13.19</u>

SCHEDULE "B-2"

<u>INCOME FROM SALES-HAUPPAGUE</u>				
Trucks-New	\$420,871.15	\$387,368.56	\$ 33,502.59	7.96
Trucks-Bodies	218,185.50	218,185.50	-	-
Trucks-Used	167,741.27	159,424.88	(8,316.39)	4.96
Parts-Counter & Shop	81,921.94	56,592.16	25,329.78	30.92
Parts-Internal	13,958.17	12,541.26	1,416.91	10.15
Labor-Customers	48,506.18	23,603.71	24,899.47	51.33
Labor-Internal	27,726.40	14,365.94	13,360.46	48.19
Sublet-Customers	4,064.57	3,146.32	918.25	22.59
Sublet-Internal	786.32	771.82	14.50	1.84
Oil and Grease	2,156.93	1,617.73	539.25	25.00
<u>TOTAL</u>	<u>\$985,918.48</u>	<u>\$877,620.88</u>	<u>\$108,297.60</u>	<u>10.98</u>

SCHEDULE "B-3"

	NEW YORK	HAUPPAGUE	TOTAL
<u>SELLING EXPENSES</u>			
Officers' Salaries	\$16,537.50	\$ 5,512.50	\$22,050.00
Sales Salaries & Comm.	15,425.07	17,889.29	33,314.36
Sales Comm.-Outside	7,483.41	4,209.42	11,692.83
Travel	2,325.11	154.67	2,479.78
Entertainment	3,665.54	650.00	4,315.54
Advertising & Promotion	5,408.72	3,042.41	8,451.13
Warranty Expense	6,724.97	3,782.79	10,507.76
Auto Expense	1,001.93	255.11	1,257.04
<u>TOTAL SELLING EXPENSES</u>	<u>\$58,572.25</u>	<u>\$35,496.19</u>	<u>\$94,068.44</u>

See Letter of Transmittal Attached.

ONLY COPY AVAILABLE

BOROD & KRAUS
CERTIFIED PUBLIC ACCOUNTANTS